

AD-A060 521

ASSISTANT SECRETARY OF DEFENSE (MANPOWER RESERVE AFFA--ETC F/G 5/9
REPORT OF THE JOINT-SERVICE ADMINISTRATIVE DISCHARGE STUDY GROU--ETC(U)
AUG 78

UNCLASSIFIED

NL

1 OF 4
AD
A060521



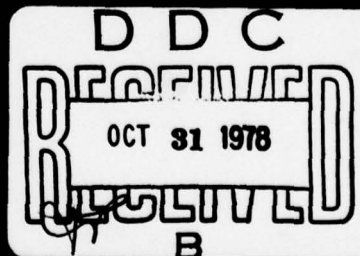
AD A060521

⑤ LEVEL

DDC FILE COPY

DISTRIBUTION STATEMENT A

Approved for public release;
Distribution Unlimited



Unclassified

SECURITY CLASSIFICATION OF THIS PAGE (When Data Entered)

REPORT DOCUMENTATION PAGE		READ INSTRUCTIONS BEFORE COMPLETING FORM
1. REPORT NUMBER	2. GOVT ACCESSION NO.	3. RECIPIENT'S CATALOG NUMBER
4. TITLE (and Subtitle) REPORT OF THE JOINT-SERVICE ADMINISTRATIVE DISCHARGE STUDY GROUP (1977-78)		5. TYPE OF REPORT & PERIOD COVERED Final (1977-78)
		6. PERFORMING ORG. REPORT NUMBER
7. AUTHOR(s) Not applicable		8. CONTRACT OR GRANT NUMBER(s)
9. PERFORMING ORGANIZATION NAME AND ADDRESS Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (Military Personnel Policy)		10. PROGRAM ELEMENT, PROJECT, TASK AREA & WORK UNIT NUMBERS
11. CONTROLLING OFFICE NAME AND ADDRESS Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (Military Personnel Policy)		12. REPORT DATE August 1978
		13. NUMBER OF PAGES approx. 400
14. MONITORING AGENCY NAME & ADDRESS (if different from Controlling Office) Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (Military Personnel Policy)		15. SECURITY CLASS. (of this report) Unclassified
		15a. DECLASSIFICATION/DOWNGRADING SCHEDULE
16. DISTRIBUTION STATEMENT (of this Report) Approved for public release; distribution unlimited		
17. DISTRIBUTION STATEMENT (of the abstract entered in Block 20, if different from Report) Not applicable		
18. SUPPLEMENTARY NOTES		
19. KEY WORDS (Continue on reverse side if necessary and identify by block number) Discharges Separations Military Discipline Characterization of Service		
20. ABSTRACT (Continue on reverse side if necessary and identify by block number) The Study is a comprehensive review of the administrative discharge system containing a comprehensive statistical analysis of discharge trends within the Military Services. It discusses the major features of the system, characterization of service, due process considerations and current major issues of concern. It contains a number of recommendations for change, which are set forth in a proposed revision to DoD Directive 1332.14, "Enlisted Administrative Separations." The principal changes recommended by the Study Group involve: persons separated for unsuitability reasons are to receive an Honorable separation; those separated		

Unclassified

SECURITY CLASSIFICATION OF THIS PAGE(When Data Entered)

for misconduct reasons are to receive a General separation or a Discharge Under Other Than Honorable Conditions; certain circumstances may warrant no characterization of service; marginal performer rules are tightened; and persons may be transferred to the Individual Ready Reserve under certain circumstances to complete their six year military service obligation.

Unclassified

SECURITY CLASSIFICATION OF THIS PAGE(When Data Entered)

FOREWORD

The Enlisted Administrative Discharge Study Group was established in September 1977 by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (ASD(MRA&L)) to take a fresh look at the entire administrative characterization system. The charter for the study is contained at the next page. The Group consisted of two full time OASD(MRA&L) staff representatives who were assisted on a part time basis by representatives from the Military Services, the Office of the Joint Chiefs of Staff and other OSD staff members, as necessary. The appreciation of the Study Group is expressed to the many individuals and activities which participated in the preparation of the report.

ACCESSION for	
NTIS	White Section <input checked="" type="checkbox"/>
DDC	Bull Section <input type="checkbox"/>
UNANNOUNCED	<input type="checkbox"/>
JUSTIFICATION _____	
BY _____	
DISTRIBUTION/AVAILABILITY CODES	
Dist. AVAIL. and/or SPECIAL	
A	

DDC
RECEIVED
OCT 31 1978
B

78 10 16 093

DISTRIBUTION STATEMENT A
Approved for public release;
Distribution Unlimited

COPY



MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

3 September 1977

MEMORANDUM FOR Assistant Secretary of the Army (M&RA)
Assistant Secretary of the Navy (MRA&L)
Assistant Secretary of the Air Force (MRA&I)

SUBJECT: Study of Administrative Discharge System

Changes have been made over the past several years in the administrative discharge system to keep pace with legal decisions and administratively determined policy. During this time frame, various events have generated the need for a fresh look at the entire administrative characterization system. Among the more significant of these are: numerous legislative proposals, GAO reports, recent court actions, the Ford Clemency Program and the Special Discharge Review Program. Of immediate concern, in a recent DoD response to the GAO report concerning costs associated with the apprehension of deserters, a commitment was made to study the administrative discharge system. The Senate Appropriations Committee has requested a copy of that study at the time of the submission of the FY 1979 budget. In order to be responsive to this requirement, I have determined that the most practicable way to accomplish a major portion of this task is to conduct an in-house study.

The purpose of the study will be to provide the Secretary of Defense with information and recommendations that will better enable the Secretary to discharge his responsibilities in this area. The study should result in a definitive, objective analysis of the entire system and include an articulation of overall purpose, as well as a comparison of the needs of the Government, the Military Services, society, and the individual. The findings and recommendations should address the need for the honorable discharge, the three-tiered discharge system, its interface with the military justice system, possible future manpower implications, and the needs of the military, its members, and former members.

You are requested to select an appropriate officer (O-5 or O-6) who has the required expertise to work with members of my staff, on a recurring, on-call basis, in the conduct of this study. This officer should have access to supporting personnel and senior level managers who can provide continuing direction to the study's efforts. By 12 September 1977, please furnish the name of your representative to the DASD(MPP).

//signed//

John P. White
Assistant Secretary of Defense
(Manpower, Reserve Affairs & Logistics)

The Final Report of the Joint-Service
Enlisted Administrative Discharge Study Group

by

Principal OASD(MRA&L) Staff Members

Chairman, Administrative Discharge Study Group

Captain E. T. Boywid, JAGC, USN

Special Assistant for Legal and Selected Policy Matters

Lt Col G. A. Johnson, USAF

Assistant Director, Personnel Administration and Services

Service Representatives appointed to Study Group

Captain W. A. Lott, USN

Director, Enlisted Performance Division

Bureau of Naval Personnel

LtCdr D. R. Neutze, JAGC, USN

Legal Assistant to Assistant Chief of Naval Personnel for Perf. & Eval.

Bureau of Naval Personnel

LtCol G. T. Luchino, USA

Chief, Promotions & Separations Br.

Office of the Deputy Chief of Staff, Personnel

Department of the Army

Maj G. A. Blocker, USAF

Personnel Staff Officer

Office of the Deputy Chief of Staff, Manpower & Personnel

Department of the Air Force

Maj R. Negron, USMC

Manpower Policy Analyst

Office of the Deputy Chief of Staff, Manpower

Headquarters, U.S. Marine Corps

Lt B. McGann, USN

Action Officer

Office of the Joint Chiefs of Staff (Plans & Policy)

TDY Support Staff

LtCol F. P. Flatten, JAG, USAF

Assistant Staff Judge Advocate

USAF Manpower & Personnel Center

D. B. Bell, Ph.D.

Senior Research Psychologist

Army Research Institute

Lt M. A. Liberatore, USN
Head, Case Processing Section, Enl. Perf. Div.
Bureau of Naval Personnel

Other Participating Personnel

Col G. E. Williams, USA, OJCS
LTC J. A. Badami, JAGC, USA, OSD
Maj D. S. Hall, USAF, Dept of the Air Force
Mr. L. R. Lamb, Jr., Dept of the Navy
Maj M. A. Koebig, USMC, Hqs USMC

August 1978

Prepared for the Assistant Secretary of Defense (Manpower, Reserve Affairs
and Logistics) (ASD(MRA&L))

TABLE OF CONTENTS

<u>Chapter</u>		<u>Page</u>
	Foreword	i
	Charter Letter	ii
	Study Group Staff	iii
	Table of Contents	v
	Index to Tables	vii
1	Enlisted Administrative Discharge Study Group- Background, Methodology, Observations and Recommendations	1-1
	Encl 1 - Summary of Proposed Changes to DoDD 1332.14	
	Encl 2 - Proposed DoD Directive 1332.14	
2	Administrative Discharge/Separation System	2-1
	I. Purpose	2-1
	II. Major Features	2-1
	III. Current Major Issues	2-6
	IV. Conclusions	2-12
3	Data Analysis	3-1
	I. Trends in Characterization Practices-- A Comparison and Analysis of FYs 1972 and 1977	3-1
	II. Service Implementation of DoD Separation/ Discharge Policies: An Analysis of FY 1977	3-12
	III. Service Implementation of Marginal Performer Programs: Description	3-29
	IV. Analysis of the Effects of the Administrative Discharge System on the Vietnam-Era Veteran	3-40
	V. Conclusions	3-51
 <u>Appendices</u>		
A	Historical Development of Enlisted Administrative Separations/Discharges	A-1
B	DoD Directive 1332.14, Enlisted Administrative Separations, 29 December 1976	B-1
C	Comparison and Summary of Major Legislative Proposals by the 95th Congress Concerning Administrative Discharges	C-1

Appendices (Cont'd)

		<u>Page</u>
D	Due Process	D-1
E	Comparison of Major Provisions of DoD 1332.14 with Service Implementing Instructions	E-1
F	ASD(MRA&L) letter, 27 May 1978, to the Senate Appropriations Committee transmitting a copy of Secretary of Defense decision and report concerning discharge in-absentia (copies also sent to HAC, SASC, HASC and GAO)	F-1
G	Index to Reference/Supplemental Material	G-1

INDEX TO TABLES

1	Percent of Types of Discharge Issued by Service in FY72 and FY77	3-1
2	Percent of Types of Discharge for Unsuitability between FY72 and FY77	3-5
3	Percent of Types of Discharge for Misconduct Reasons - FY72 and FY77	3-8
4	Number and Percent of Types of Discharge Issued by the Services during FY77	3-14
	Figure 1 - Graph Reflecting Percent of Honorable Discharges by Service FY50-FY77	3-15
5	Characterization of Service for Major Categories of Discharge in FY77	3-17
6	Differences in Characterization of Discharges Issued in FY77 by the Services for Selected Convenience of the Government Reasons	3-20
7	Differences Between Types of Discharges Issued by the Services in FY77 for Selected Reasons of Unsuitability	3-23
8	Differences Between Types of Discharges Issued by the Services in FY77 for Selected Reasons of Misconduct	3-25
9	Comparison of Adverse with Non-adverse Reasons for Discharge	3-27
10	Percent of Honorable Discharges Issued to Marginal Performers FY74-FY77	3-39
11	Comparison of Number and Percent of Military Personnel in Southeast Asia	3-40
12	Comparison of the Number and Percent of Honorable and Less than Honorable Discharges given during Three Conflicts	3-41
13	Number and Percent of Discharges issued by Type and Service during the Vietnam-era	3-42
14	Relation of Entry Characteristics and Type of Discharge for Veterans (FY71-FY75)	3-43
15	Relation of Service Characteristics and Type of Discharge for Veterans (FY71-FY75)	3-45

CHAPTER 1

Enlisted Administrative Discharge Study Group - Background, Methodology, Observations and Recommendations

Background

In addition to the Study Group's broad charter, additional important responsibilities were assigned because of their close relationship to the Group's effort. These included participation in a White House directed review of the status of Vietnam-era veterans, the requirement for a deserter apprehension plan based upon the FBI's curtailed involvement with the apprehension of deserters and the drafting and negotiation of a memorandum of understanding between the Department of Defense and the FBI on their continued role in this effort. Another ancillary issue in which the Study Group members participated included the planning and design of the new DD Form 214 (Certificate of Release or Discharge from Active Duty), and its rules for issuance to be compatible with the requirements of the proposed directive and its provision for a non-characterized certificate of service in certain cases. Also, the effects of the proposed directive on the recently published DoD Directive 1332.28, "Discharge Review Board Standards and Procedures," were considered in its formulation. These additional taskings required TDY augmentation by four additional support staff personnel for a period of 60 to 90 days. The documents produced as a result of these efforts are specifically identified in Appendix G.

Methodology

Members of the Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) staff provided overall direction and control to the Study Group's efforts and were primarily responsible for producing

the overall report. The Service representatives, including the representative from the Office of the Joint Chiefs of Staff, were responsible for formulating the major issue papers (see Chapter 2); conducting extensive research, and data collection and analysis. Their principal efforts centered on development of the proposed revision of the DoD Directive 1332.14, "Enlisted Administrative Separations" -- which incorporates in understandable language within the military personnel systems of the Services -- all of the Study Group's detailed conclusions discussed in Chapters and 3 of this report. These conclusions were made with a view toward accommodating, coordinating and balancing the many varied interests affected by the Administrative Discharge System, especially the average servicemember subjected to that system. The result is a control directive, which is designed to maintain the ethics of our military society and the unique requirements associated with military service, while at the same time recognizing the impact that record of service has on its members upon their return to the civilian sector. It will also provide increased protection for individuals when a less than fully honorable separation is at stake and streamlined the procedures when such is not the case.

The Study Group endeavored to compile in the Appendices the documents of particular importance to this study, including an extensive index to reference/supplemental materials (Appendix G) that may be useful to future study efforts.

Observations

As reflected in Chapter 2, the Study Group concluded the current administrative separation system should be maintained, but is in need of updating

to comport with existing circumstances. This need was best illustrated through the identification of five major issues discussed at length in that Chapter.

Resolution of one of those issues -- discharge in-absentia -- has already been achieved. The remaining issues are:

- . retention of "Honorable Discharge"
- . retention of three-tiered administrative separation system
- . whether more administrative discharges should be forced into the punitive system of the Uniform Code of Military Justice
- . whether marginal performer program is causing unnecessary attrition

The Study Group's resolution of these and many other issues are based on the detailed conclusions reached in Chapters 2 and 3. They are also discussed in the detailed Summary at Enclosure 1. Recommendations for implementation are contained in the proposed revision of the directive (Enclosure 2).

The principal cause for the wide disparity of results among the Services as reflected in Chapter 3, both in the reasons for and the characterization of service, is that the control DoD directives over the years have contained insufficient definition and policy guidance. By design they have provided merely a broad framework within which the Military Services were able to fashion their relatively independent implementing instructions. The Study Group concluded that, because of many factors, a greater degree of uniformity is needed. One such factor is the requirement for uniform standards and procedures for discharge review, which came about as a result of Public Law 95-126 dated October 8, 1977.

The most significant changes reflected in the proposed directive are:

- . further definition and positive policy statements regarding the negative or adverse reasons for separation.
- . change in philosophy whereunder all individuals found unqualified for further service, where the reason is mostly non-volitional in nature, receive Honorable Discharges and are entitled to a hearing only when they have achieved a career status (5 years) or pay grade E-4.
- . persons being separated by reason of misconduct may receive only General Discharges or Discharges Under Other Than Honorable Conditions, but only after a full and fair board hearing, unless the individual personally waives the hearing.
- . persons being separated for good cause, but circumstances indicate any characterization is inconsistent with that concept, may receive a non-characterized certificate of service.
- . persons requesting an other than honorable discharge in lieu of trial by court-martial must have first progressed to the referral stage of court-martial processing.
- . marginal performer rules are tightened to exclude those who have already become disciplinary cases, are limited to grades E-1 through E-3 and are limited to those with less than 24 months of service.
- . the six year military service obligation, along with the Reserve components, are recognized and incorporated, including a provision for transfer to the Individual Ready Reserve and the addition of a separate reason for separation under the misconduct category -- unsatisfactory participation -- specifically applicable to Ready Reservists.

Recommendations

. Recognizing the innovative changes contained in the proposed directive (Enclosure 2), the Study Group recommends its submission, along with this report, only to the Military Departments at this time for preliminary review and comments prior to full internal and external staffing of the directive.

. The Army be tasked to redesign its current system for documenting discharge of Reservists that would eliminate use of the General Discharge certificate and the Discharge Under Other Than Honorable Conditions certificate to comport with the proposed directive.

. The Navy, as the designated Assigned Responsible Agency, be tasked to update the separation program designator codes to comport with the proposed directive.

ADMINISTRATIVE DISCHARGE STUDY GROUP

SUMMARY OF PROPOSED CHANGES TO DOD DIRECTIVE 1332.14

GENERAL

The proposed new directive contains numerous changes in the organization of the directive. However, such changes, as well as minor wording changes, will not for the most part be discussed in this summary. To assist in understanding the proposed revisions, the Study Group's rationale is set forth where appropriate.

DELEGATION OF AUTHORITY

The proposed directive delegates authority to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) to modify or supplement the directive in a manner consistent with the policies contained therein. This delegation is designed to relieve the Secretary of Defense of the burden of action on all minor revisions to the directive and is consistent with a similar delegation of authority in the area of Discharge Review Boards.

POLICY GUIDANCE

One innovative feature of the Study Group's proposed directive involves clearly defining Department of Defense policy regarding retention of certain classes of individuals. While earlier versions of the directive provided a skeletal structure around which the Services could build, uniform policy guidance was lacking in most areas. This resulted in disparate policies between the Services which could not be justified by legitimate Service differences. While the group realistically recognizes that the Services will never be precisely the same in the area, inclusion of policy guidance

in appropriate areas is intended to minimize variances among the Services, especially in regard to characterization of service.

TRANSFER TO THE RESERVES

One major change in the Study Group's proposed directive involves the concept of retaining members separated early for cause (e.g., convenience of the government, hardship, etc.) in the Reserves of their respective Military Departments to fulfill their total military obligations under 10 USC 651. Thus, the thrust of the directive is "separation" rather than "discharge;" characterization of discharge upon completion of total military service will normally be the same characterization assigned upon release from active duty. While the current directive does not explicitly so state, members discharged "for cause" are normally completely severed from all military service. This new revision is intended to provide a pool of trained manpower for Reserve components who have been having difficulty in maintaining their numbers in light of the all-volunteer force. Exempted from this general provision are members who receive a discharge under other than honorable conditions and others that may be determined by the Military Service.

DEFINITIONS/TERMINOLOGY

There have been few significant changes in definitions of terms used throughout the directive. In several instances, definitions or explanation of terms used in prior versions of the directive were added for clarity. One important change in definition which should be noted involves the term "counsel." Previously, non-lawyer counsel could be utilized where appropriate authority certified in the record nonavailability of a lawyer and set forth the qualifications of substitute non-lawyer counsel. The term

"counsel" has been redefined in the draft directive to require lawyer counsel in all instances. It was felt by the members of the Study Group that the rights involved were so significant that in all cases, administrative discharge boards should be delayed in order to give the respondent an opportunity to be represented by lawyer counsel.

DOCUMENTATION

While the Study Group recommends that upon separation members only be provided with a DD Form 214, Certificate of Release or Discharge from Active Duty (revised title), showing the period of service concerned and certain other information; upon request, a member would also be provided with written evidence of the characterization of service and certain other sensitive elements of information. The foregoing will, of course, necessitate some changes in DoD Instruction 1336.1, which are already underway. The Honorable Discharge (DD Form 256) would continue to be awarded to those entitled to it upon completion of military service obligation. Such a certificate provides a means of recognizing honorable service. The General Discharge certificate (DD Form 257) or a Discharge Under Other Than Honorable Conditions certificate (DD Form 794) would only be issued to those Reservists whose service is terminated for adverse reasons. Further study is necessary with regard to their eventual replacement with something on the order of a modified DD Form 214 or some other suitable document. These certificates obviously serve little purpose, other than to meet the intent of 10 USC 1168 of providing a member with a "discharge certificate or certificate of release from active duty," since these documents would not likely be displayed publicly.

CHARACTERIZATION OF SERVICE

Major changes are proposed in the characterization of service.

1. The result of such changes will mean some increase in the total numbers of Honorable Separations awarded and a corresponding decrease in the number of General Separations. This will result from the award of only Honorable Separations for such categories of reasons as expiration of enlistment, convenience of the government, unsuitability, dependency or hardship, minority, or disability. Previously, members separated for the foregoing reasons could be awarded either an Honorable or a General Discharge based upon the member's military record. It was clear to the members of the Study Group that, as a practical matter, if not as a legal matter, a General Discharge carries some stigma for the former member. Such stigmatization should occur only in cases of misconduct or discharges to escape trial by court-martial. A limited exception to the foregoing rule applies in cases where the Secretary exercises his plenary authority on a case-by-case basis to discharge a member. The Secretary's exercise of such power has normally been limited to those cases in which the member was processed for misconduct and the board recommended retention. Not only were the members of the Study Group concerned with the number of General Separations being issued but there was general agreement within the Study Group that individuals who completed their military service or who were separated early for reasons essentially beyond their control should receive a fully Honorable Separation.

2. One of the most innovative suggestions within the draft directive also authorizes an uncharacterized separation in certain very limited circumstances when characterization would be inappropriate. An uncharacterized separation may be issued to a member who is separated during recruit or

basic training except in the case of misconduct. The only other reason such a separation could be issued would be on a case-by-case basis when determined by the Secretary concerned that characterization in such a case was inappropriate because of its unique circumstances. An example of such a case might be a career member with an outstanding record who murders his wife and her lover whom he has caught in flagrante delicto. While an Other Than Honorable Discharge might normally be appropriate for such a crime, the mitigating circumstances surrounding the crime, combined with the member's prior unblemished record could provide justification for the Secretary to issue the uncharacterized certificate rather than an Other Than Honorable Discharge. On the other hand, in such a case, the Secretary might also consider the award of an Honorable Discharge recommended by the board to be equally inappropriate. In recommending this provision, the members of the Study Group intend that such authority be utilized sparingly.

CONVENIENCE OF THE GOVERNMENT

Several changes are recommended in the area of convenience of the government separations.

1. The current directive provides that erroneous induction or enlistment is one basis for a convenience of the government separation. However, the current directive fails to define the term "erroneous induction or enlistment." The proposed revised directive would expand the term to include an extension of an enlistment and provide the following clarification -- "an erroneous induction, enlistment, or extension of enlistment is...one that would not have occurred had the true facts been known to the Government and had the proper actions been taken based upon those facts."

2. The current DoD directive prescribes a convenience of the government separation for members serving in unspecified enlistments.

Currently, unspecified enlistments are not authorized by law although there are some members of the Army who are continuing to serve in such enlistments entered into prior to a change in the law. Because of its limited applicability, this reason was deleted as one that should be prescribed by each of the Services as a basis for a convenience of the government separation. This does not mean that there is no mechanism to separate such individuals; rather it is left to the discretion of the Services to prescribe such regulations.

3. The regulation that permits the voluntary separation of women members for pregnancy or childbirth has been tightened. Members of the Study Group believe that the Secretary concerned should have the power to disapprove such a request for separation when it is not in the best interest of the Service. For example, an enlisted woman who had recently completed a lengthy technical course might seek to procure her early separation by simply becoming pregnant. However, under the revised directive, the Secretary would have discretion to require the member to complete her active obligated service. It must be emphasized that the revised wording in the directive is not intended to work a radical departure from current practice but merely to provide each Secretary a means of retaining members in whom a substantial training investment has been made or to prevent clear abuses.

4. The marginal performer program is included under the convenience of the government category. This portion has also been tightened to prevent its utilization as a convenient or expedient means of ridding the Services of undesirable individuals in a relatively easy manner, thus contributing

to the first-term attrition problem that the Services are facing. The current directive does not specify a limitation by pay grade; the Study Group recommends that eligibility for the program be limited to individuals in pay grade E-3 or below. Additionally, the Study Group recommends that members only be eligible until completion of 24 months of active service in an armed force rather than 36 months total service as provided in the current directive. The Study Group was of the opinion that 24 months was more than an adequate period during which such marginal performance would manifest itself. Additionally, the current directive limits its application in terms of total service, vice service in a particular armed force. It was believed that the time in service requirement of the marginal performer program should be tied to service in the armed force concerned rather than disqualifying the individual because of prior service in one or more of the other armed forces. Additionally, a member would not qualify for separation under the marginal performer program as recommended by the Study Group if the individual has more than three Article 15 punishments or courts-martial following completion of basic/recruit training. The thinking in this regard was that individuals who have more than three such involvements with military authorities subsequent to basic training are deserving of processing for misconduct where the commander decides that the individual is not suitable for military service. The disqualifying Article 15 punishments are limited to those committed after the completion of basic/recruit training because individuals may receive frequent nonjudicial punishments during recruit training as a teaching or training device. It was felt that it would be unfair to include such nonjudicial punishments in disqualifying an individual from the marginal performer program.

MINORITY DISCHARGES

The Study Group proposal regarding minority discharges makes a clear distinction between those individuals who have reached the statutory age for enlistment (age 17) and those who have not. The earlier language was fuzzy in that it provided for "release by avoidance of contract or separation with an honorable or general discharge..." The draft language clearly specifies that members who were under the age 17 at the time the defect is discovered will be processed for a void enlistment in accordance with other provisions of the article. Members who have attained age 17 but have not yet attained age 18 will be honorably discharged upon application of the parents under certain circumstances.

VOID/VOIDABLE ENLISTMENTS

The Study Group recommends creation of a new form of separation in the case of void/voidable enlistments. The proposed directive provides that ~~members~~ who are statutorily ineligible to enlist or over whom court-martial jurisdiction is lacking because of a defective enlistment may be released from military control with an uncharacterized DD Form 214. This section was primarily designed to provide a regulatory basis of separation with an uncharacterized DD Form 214 of individuals with Catlow/Russo type defects in their enlistments (e.g., recruiter malpractice). While the proposal is similar to what some Services are actually doing, it was recognized that no formalized system existed for the separation of individuals who are statutorily ineligible to enlist (insane, intoxicated, etc.). This form of release was selected because it does not stigmatize individuals who should not have been in the service in the first place, nor does it reward individuals with an Honorable Discharge whose conduct cannot be said to have been honorable.

UNSUITABILITY SEPARATIONS

The Study Group recommends several significant changes in the area of unsuitability separations.

1. It should first be noted that the Study Group gave considerable thought to changing the term "unsuitability." However, it was felt that the term "unsuitability" most accurately described the reason that such members were being discharged from the service.

2. As previously noted, the most significant change in this area is requiring an Honorable separation in all cases in which members are separated by reason of unsuitability. The reason behind this recommendation is the Study Group's belief that individuals who are separated because of factors normally of a non-voluntary nature apparently beyond the control of the member which make retention incompatible with the best interest of the Service should not form a basis for stigmatizing such individuals with a General separation.

3. In the area of personality disorder separations, the language in the recommended revision requires diagnosis by a physician (preferably a psychiatrist) or a clinical psychologist. This revision in language is intended to narrow the class of individuals entitled to make such a diagnosis, which, in the current directive, is simply "medical authority." The revised language makes clear that a diagnosis by a hospital corpsman or a physician's assistant is not adequate to support a separation by reason of a personality disorder.

4. The Study Group recommended deletion of financial irresponsibility as a basis for processing for unsuitability. The rationale for such recommendation is that this is essentially a civilian matter and only certain

aggravated forms of financial irresponsibility such as failure to support dependents or failure to pay court judgments should be the basis for processing for separation. In such cases, members should be processed for misconduct rather than unsuitability.

5. Treatment of homosexuality and homosexual acts is one of the more significant of the Study Group's recommendations. Under the unsuitability portion of the directive, it is clearly stated that homosexuality is incompatible with military service. Such a policy statement is nowhere else contained within DoD directives. The proposed directive makes clear that the processing for homosexual acts is mandatory unless it is determined by competent authority that the allegations of homosexuality are groundless. The proposed directive divides homosexuality into two main categories. Certain aggravated homosexual acts fall within the definition of misconduct. The remainder of homosexual acts not falling within the purview of the misconduct article, and homosexual tendencies both fall under the category of unsuitability. Although the subject of homosexuality and the question of whether or not homosexuality is a mental disease are controversial, the Study Group felt that by and large, homosexual acts were in the nature of non-volitional acts and therefore absent certain aggravating circumstances, individuals discharged for this reason should not be stigmatized with a less than Honorable Discharge. While the language in the proposed directive may at first blush seem excessively liberal, it is not a significant departure from what the Services are already doing in this area.

6. Another area of sexual conduct deals with the "other aberrant sexual tendencies" language included within the current directive and

retained in the Study Group's recommendation. However, the proposed revision would also specifically refer to sexual reassignment operations and marriages between members of the same sex as a basis for processing for other aberrant tendencies. These are growing problems for the Services and it was considered that they should be addressed specifically in the directive.

7. A separate reason has been added of considerable significance in that it would provide for the consideration of mitigating or extenuating circumstances in those few cases where, although misconduct is involved, the case should be upgraded to the unsuitability category, because an honorable separation is precluded for misconduct reasons. Further, under the revised structure of reasons for separation, it is believed that a true misconduct case does not warrant better than a General Discharge.

MISCONDUCT

The Study Group has also proposed several significant changes in the area of misconduct discharges.

1. The first and probably the most important change that the Study Group recommends is that individuals separated by reason of misconduct receive either a General Discharge or an Other Than Honorable Discharge. The rationale behind this proposal is that the group considers it absolutely ludicrous to reward an individual with an Honorable Discharge when the individual is separated for misconduct.

2. "Frequent contraction of venereal diseases" was added as a new basis for discharge under misconduct. This provision is intended to take

the place of the section dealing with unsanitary habits which was deleted from the unsuitability area. It is considered that the introduction of venereal diseases into a military unit poses a substantial threat to the health, morale and well-being of the military community. While, of course, it could be argued that the contraction of venereal disease does not injure anyone other than the member, the possibility of homosexual contacts as well as the increased numbers of women in military units cause the contraction of venereal disease to have a much broader impact. The Study Group certainly does not believe that a member should be discharged from the service for an isolated incident of contraction of a venereal disease. Rather, repeated contraction of a venereal disease after counselling has been incorporated as a requirement for discharge. Inclusion of this under the misconduct, rather than the unsuitability, category is deemed necessary to preclude an "easy" way of obtaining a fully Honorable separation.

3. The section on sexual perversion has been restyled "sexual deviation" as a more descriptive term. While all homosexual acts were previously considered to be misconduct, the recommended revision would limit application of the misconduct provision only to aggravated homosexual acts which are defined to include:

a. The attempt, solicitation or accomplishment of a homosexual act with a child under the age of 16 years regardless of the cooperation of the child.

b. The attempt, solicitation or accomplishment of a homosexual act accompanied by assault or coercion so that one party involved did not willingly cooperate or consent or where the consent or cooperation was obtained through force, fraud, or intimidation.

4. Prostitution was included as a new basis for discharge for misconduct. Prostitution is defined for the purposes of the revised article as "the act of a male or female engaging in sexual practices for payment." While the growing number of female personnel within the armed services is one of the prime reasons behind this provision, it is drafted to include homosexual prostitution as well as the more traditional form of this activity.

5. Still another basis for a misconduct discharge recommended by the Study Group is "unsatisfactory participation" in a Reserve component. It was felt that a misconduct discharge for failure to satisfactorily participate in a Reserve component was the only type of discharge which is severe enough to have the effect of encouraging full compliance with Reserve obligations.

GOOD OF THE SERVICE DISCHARGE

The Study Group has also recommended an important change in the areas of requests for discharge for the good of the Service and to escape trial by court-martial. The language in the current directive simply requires that the member be involved in conduct which "has rendered a member triable by court-martial for an offense...punishable by a punitive discharge." This language has been interpreted differently by the Services which was one basis for the recent GAO recommendation to eliminate discharges in lieu of trial by court-martial. The Study Group recommends that the directive be changed to require that "court-martial charges against a member for an offense for which the imposition of a punitive discharge is authorized have been referred to trial." This language is intended to promote uniformity among the Services by making "referred charges," rather than conduct "triable

by court-martial" the standard. Additionally, it is believed that such a standard will require more meaningful discussion between an accused and his defense counsel and will serve to preclude future allegations of pro forma explanation of rights to a large group of accused. The Study Group spent considerable time debating whether the prohibition on using the so called "escalator clauses" in the Table of Maximum Punishments should be eliminated. It was concluded that such a requirement was added to the directive in 1975 to preclude abuses and should not be disturbed.

SECRETARIAL AUTHORITY

Previously, the plenary discharge authority of the Secretaries of the Military Departments was included under the convenience of the government section. However, the Study Group recommends that this provision be a separate basis for discharge. The reason for such recommendation is that all convenience of the government separations would be honorable under the proposal of the Study Group; however, it was felt that in some circumstances, such as when the Secretary directs discharge in a misconduct case where the board has recommended retention, a General Discharge is more appropriate than a fully Honorable Discharge. By removing the Secretary's authority from the convenience of the government area, a General Discharge may be awarded by the Secretary in such instances without destroying the basic scheme which makes all convenience of the government separations fully honorable. This is, of course, a minor exception to the general rule that the General Discharge is reserved only for certain cases of misconduct and to escape trial by court-martial.

PROCEDURAL REQUIREMENTS

The Study Group has recommended several changes in procedural requirements in the proposed directive.

1. The draft contains two significant changes in the composition of administrative discharge boards.

a. The first change allows respondents who are members of regular components to request appointment of an enlisted member to sit as a member of the administrative discharge board. Such members must be serving in pay grade E-7 or above and must be senior to the respondent. Additionally, this change is intended to thwart criticism by those who contend that the absence of enlisted members creates an inherent unfairness in the system. While the Study Group's intent was that any member should be entitled to request an enlisted member to sit on the board, because of a statutory limitation (10 USC 1163), the provision had to be limited only to regular members.

b. The current DoD directive authorizes minority group members and female members to request in writing that a member of the same minority group or a female be appointed to the board. The proposed new directive would make it clear that a female member of a minority group is not entitled to both female and minority representation. Rather, the respondent shall be required to elect in writing the category from which the special representative is requested. This new provision is intended to preclude undue hardship on commands in convening administrative discharge boards, while at the same time accommodating the special request of female and minority members. It should be noted that this requirement does not affect the right of a regular female or minority member to have an enlisted member

appointed to his/her board in addition to either the female or minority representative.

2. In the area of unsuitability, the Study Group recommends that members in pay grades E-4 or above or members with five or more years of total active and/or inactive military service be entitled to an administrative discharge board when being processed for unsuitability. The current directive provides for a board only in cases where the member has more than eight years of service, regardless of pay grade. Considerable disparity exists among the Services as to how this provision is being applied. It is applied strictly by the Navy, granting boards only to members with more than eight years total service. The Air Force provides boards to all personnel in pay grades E-4 or above, whereas the Army provides boards to everyone being processed for unsuitability regardless of time in service or grade. The Study Group is of the opinion that this disparity among the Services in granting board hearings in unsuitability cases is an inequity which requires correction. Accordingly, the Service representatives reached a compromise position that each felt his/her own Service could live with. The criteria selected were each considered indicative of career status and thus appropriate points at which the right to a hearing should attach.

3. The Study Group recommends incorporation of revised procedures concerning discharges of members of Reserve components not on active duty. Previously, such a member had to be notified by mail, return receipt requested and received indicating delivery of the proposed action, and advising the member of his or her rights. This proved to be a cumbersome procedure and was easily thwarted by the Reservists who refused to sign the postal receipt. The revised procedure incorporates provisions similar to

those found in the Federal Rules of Criminal Procedure which authorize the delivery of process by delivering written notification to the individual personally or leaving written notification at the individual's dwelling place or usual place of abode with some adult person residing therein and mailing a copy to the individual's last known address. It is believed that the revised procedures will greatly assist in serving notice of proposed discharge action on uncooperative Reservists and will, at the same time, fulfill the notice requirement necessary to satisfy due process standards.

4. The present directive does not specify the evidentiary standard required to support an administrative board's findings and the Services each apply a different standard. The Study Group concluded that there were no legitimate "service differences" which justify application of different standards in this area and recommends inclusion in the directive of a requirement that the board's findings be supported by a "preponderance of the evidence."

5. The Study Group has suggested an important change in the recommendations that the administrative discharge board may make. Currently the board may either recommend retention or it may recommend separation for a specified reason and characterization of service. The Study Group's proposed revision would also authorize the board to recommend a member be separated and that such action be suspended on probation for a given period of time, which shall not be less than six months, nor more than one year. The Study Group's concern is that under the current directive, the only way to arrive at a probated separation is to have the board first vote for separation. However, it felt that many boards are reluctant to do so, since any recommendation that they might make would not be binding on the

separation authority. It is believed that by giving the board the power to make a binding recommendation for probation on the separation authority, boards will be much less likely to vote for retention of a member who they feel should be given one more chance. Should the separation authority be absolutely opposed to suspending the separation on probation, such authority could forward the case to the Secretary concerned for separation under the Secretary's plenary authority. This would be no different than the procedure under the current directive where the board recommends retention; the separation authority must either retain the member or forward the case to the Secretary concerned for action.

6. The Study Group also suggests several substantive changes in the area of witnesses before the administrative discharge boards. The primary reason for the recommendations for change in this area is to promote clarity in this area. Under the proposed directive:

a. Witnesses not on active duty may be invited to attend the hearing to give testimony relevant to the respondent's case. Such witnesses must appear voluntarily and at no expense to the government. If such a witness declines to appear because of timing, the board may, if it determines the witness' testimony to be material, grant a reasonable continuance to permit attendance of the witness.

b. In the case of witnesses on active duty, the respondent shall address requests for witnesses to the recorder or, in the absence of a recorder, to the convening authority. Witnesses within the same geographical area (100 mile radius) as the board is scheduled to meet will be made available to testify unless the witness' Commanding Officer determines that military necessity precludes the witness' attendance. The hearing will be

postponed or continued for a reasonable period of time to permit attendance of military witnesses in the geographical area of the hearing. If the requested active duty witness is not in the geographical area of the board's scheduled meeting place, the convening authority will make a determination whether the personal testimony of the witness is necessary. The convening authority's decision in this regard is final. If it is determined that the witness is necessary, the hearing will be postponed or continued to permit attendance of the witness. If it is determined that the personal testimony of the witness is not necessary, the hearing shall be continued or postponed to provide the respondent with an opportunity of obtaining a written statement from the requested witness.

The Study Group was concerned about preserving the basic rule that there is no absolute right to the personal appearance of a witness. At the same time, however, the Study Group did want to give the respondent a full opportunity to obtain statements of witnesses who could not attend.

7. The current directive provides that the respondent may challenge any voting member of the board for cause only. The Study Group recommends retention of this provision; however, it also recommends adding a specific right of the respondent to question the members in order to determine if a basis to challenge for cause exists. While such a right to question the members would seem inherent within the right to challenge the members for cause, it was felt that in some instances respondents may have been denied such an opportunity in the past. This language is designed to eliminate such possibility in the future.

8. The Study Group also recommends language which would make it clear that members who absent themselves without authority after their case has been processed to the point that their presence is no longer necessary may

be separated without being returned to military control. It must be emphasized that this language is not to be confused with the in absentia provision and is not tied to the 18-month requirement in any way. Thus, a member who is processed for frequent military involvement who absents himself/herself after board action is complete could be awarded an Other Than Honorable Discharge without being returned to military control.

SUSPENSION/VACATION OF SUSPENSION

The Study Group has recommended two changes in the area of suspension of execution of approved separations.

1. The separation authority may not suspend execution of an approved separation on the basis of fraudulent enlistment. This change incorporates a decision of the Comptroller General in this regard.

2. The Study Group recommends that in a case where a member on a suspended discharge is involved in additional misconduct, and the separation authority decides to vacate the suspension, the member shall be afforded the opportunity to make a written statement in rebuttal or explanation of the member's conduct which is alleged to form the basis to vacate the suspension. It is believed that such a right to respond in writing is necessary in order to meet evolving due process standards. Such right would not attach, however, where the member has absented himself/herself without authority in excess of 15 days.

SUBJECT: Enlisted Administrative Separations

References: (a) DoD Directive 1332.14, subject as above, December 29, 1976

(hereby cancelled)

(b) through (j), see enclosure 7

A. PURPOSE

This Directive reissues reference (a) to update the policies, standards, and procedures which govern the administrative separation of enlisted persons from the Military Services and implements various provisions of Title 10, United States Code (reference (b)). Reference (a) is superseded and cancelled.

B. APPLICABILITY AND SCOPE

The provisions of this Directive apply to the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps, and, by agreement with the Secretary of Transportation, to the Coast Guard. When the terms "Military Services or Departments" are used in this Directive, the Coast Guard is included.

C. DEFINITIONS

Terms used in this Directive are listed in enclosure 1.

D. POLICY

1. The Military Services have the right to separate from the Service, with an appropriate characterization of service, those members who clearly demonstrate they are unqualified for retention. At the same time, such

members have rights which shall be protected.

2. In determining whether a member should retain current military status or be administratively separated, the member's entire military record should be evaluated including (a) records of nonjudicial punishment imposed during a prior enlistment or period of service, (b) all records of conviction by court-martial, and (c) any other factors which are material and relevant.

3. The Military Services will provide for separation under certain circumstances or conditions to meet the needs of the Service and its members.

4. Standards and procedures for separation and retention are prescribed in enclosures 2 through 6.

5. Except for those members discharged under other than honorable conditions, personnel released from active duty under the provisions of this directive may be retained in the Ready Reserve of their respective Military Service to fulfill their total military obligation in accordance with reference (b), Section 651, under standards and conditions established by the respective Military Service concerned.

E. RESPONSIBILITIES

1. Each of the Military Services shall:

a. Prescribe appropriate internal procedures for periodic explanation to members of the types of discharges, the basis for their issuance, and the possible effects of various discharges upon reenlistment, civilian employment, veterans' benefits, and related matters. As a minimum, such explanation shall take place each time the Articles of the Uniform Code of Military Justice (UCMJ) are explained, pursuant to 10 USC 937

reference (b). Failure on the part of the member to receive or to understand such explanation, however, shall in no event be considered a defense in an administrative discharge proceeding, or a bar thereto.

b. Assure that the purpose and scope of the Discharge Review Board and the Board for Correction of Military/Naval Records, established pursuant to reference (b), Sections 1552 and 1553 are explained during the separation processing of any member discharged under other than honorable conditions.

2. The Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) is delegated the authority to modify or supplement this Directive in a manner consistent with the policies set forth herein.

F. EFFECTIVE DATE AND IMPLEMENTATION

1. This Directive is effective on . Nothing in this Directive shall establish grounds for recharacterization of discharges issued prior to this effective date.

2. Two copies of implementing documents shall be forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) within 120 days of issuance.

Enclosures - 7

1. Definitions
2. Characterization of Service
3. Reasons for and Characterization of Separations
4. Authority and Procedures for Separation
5. Suspension of Execution of Approved Separation

6. Procedures for Separating Ready Reservists by Reason of Unsatisfactory Participation

7. References

DEFINITIONS

- A. Member. An enlisted man or woman of the Armed Forces.
- B. Discharge. Complete severance from all military status.
- C. Release from Active Duty. Termination of active duty status and transfer or reversion to a Reserve component not on active duty including transfer to The Individual Ready Reserve (IRR).
- D. Separation. A general term which includes discharge or release from active duty.
- E. Administrative Separation. Discharge or release from active duty upon expiration of enlistment or required period of service, or before, in the manner prescribed herein or by law, but specifically excluding separation by sentence of court-martial.
- F. Military Record. Comprises an individual's behavior while a member of a Military Service, including general comportment and performance of duty.
- G. Prior Enlistment or Period of Service. Service in any component of the Military Services which culminated in the issuance of a separation document.

H. Administrative Discharge Board. A board appointed to render findings based on facts pertaining, or believed to pertain, to a case and to recommend retention in the Service, or separation with probation, or separation with reason specified and characterization of service to be assigned.

I. Separation Authority. As established herein and implemented by regulations issued by a Military Service, an official authorized to take final action with respect to specified types of separation.

J. Respondent. A member of a Military Service who has been notified that action has been initiated to separate him/her under a specified Service regulation.

K. Counsel. A lawyer, within the meaning of Article 27(b)(1) of the UCMJ (reference (b)) or a civilian attorney employed at respondent's own expense.

L. Characterization of Service for Administrative Separations. A determination reflecting a member's military behavior and performance of duty during a specific period of service. The three characterizations are: (1) honorable, (2) under honorable conditions, and (3) under other than honorable conditions.

M. Minority Group. A segment of the population that possesses common traits that are transmissible by descent or common characteristics and a cultural heritage significantly different from that of the general

population. Such groups include, but are not limited to Blacks, American Indians, Mexican Americans, Puerto Ricans, Eskimos, Aleuts, Asian Americans and Spanish-surnamed Americans.

CHARACTERIZATION OF SERVICE

A. Guidelines. Minimum standards of acceptable personal conduct and performance of duty for U.S. Armed Forces personnel are found in the UCMJ and Service regulations, which embody time-honored customs and traditions of the U.S. military services. "Honorable service" in the U.S. military context is the basic designation used to recognize the reason for separation or the manner in which a servicemember performed his/her service, based upon a wide and variable range of related attributes, such as courage, fidelity, honesty, trustworthiness, and effectiveness, as subjectively measured within the military chain of command. Therefore, care must be exercised in determining the reason for separation, and that the character of service is reflected as follows:

1. Honorable (Honorable Separation): Predicated upon a member's record as defined in enclosure 1, with due consideration for the member's age, length of service, grade and general aptitude unless otherwise specified herein. A member will not necessarily be denied an honorable characterization solely by reason of a specific number of convictions by courts-martial or actions under Article 15 of the UCMJ, reference (b) Section 815 during his/her current enlistment or period of obligated service.

2. Under Honorable Conditions (General Separation): Appropriate when a member's military record is not sufficiently meritorious to warrant an honorable characterization of service.

3. Under Other Than Honorable Conditions (OTH Discharge):

Appropriate when a member is discharged for (a) misconduct or security reasons when based on the approval of a recommendation of an administrative discharge board or waiver of the right to board action, or (b) resignation or request for discharge for the good of the Service. Members assigned this characterization of service will be discharged.

a. No member shall be discharged under other than honorable conditions, if the grounds for such action are based wholly or in part upon acts or omissions for which the member has been previously tried by court-martial resulting in acquittal or action having the effect thereof, except when such acquittal or equivalent disposition is based on a legal technicality not going to the merits.

b. No member shall be discharged under other than honorable conditions unless the member is afforded the right to present his/her case before an administrative discharge board, with the advice and assistance of counsel, and unless such discharge is supported by approved board findings and an approved board recommendation for such a discharge. As exceptions, a discharge under other than honorable conditions may be issued without board action if the member (1) is beyond military control by reason of prolonged unauthorized absence, subject to the limitations of reference (b), Section 1163, if a member of a Reserve Component (see enclosure 4), (2) resigns or requests discharge for the good of the Service, or (3) waives his/her right to board action.

B. Special Considerations

1. Uncharacterized service may be appropriate when a member's term of military service has been of insufficient length to warrant characterization or when unusual circumstances indicate an inconsistency with the concept of characterization. Such a determination may be made when a member is separated during recruit or basic training, except in the case of misconduct, or in unusual circumstances, on a case by case basis, when determined by the Secretary concerned.

2. In any case in which a discharge Under Other Than Honorable Conditions is authorized under this Directive, a member may receive an under honorable conditions characterization if, during the member's current enlistment or period of obligated service, or any voluntary or involuntary extension thereof, or period of prior service, the member has been awarded a personal decoration as defined by the member's Service, or if warranted by the particular circumstances of a specific case.

3. Except as indicated below, the characterization of service of the current enlistment or period of service will be determined solely by the member's military record during that enlistment or period of service, plus any extensions thereof prescribed by law or by the Military Service concerned, or effected with the consent of the member. The following shall not be considered:

a. Prior service activities, including but not limited to records of conviction by courts-martial, records of nonjudicial punishments, records of absence without leave, or commission of other offenses for which punishment was not imposed.

b. Preservice activities, excepting misrepresentations, including omission of facts which, if known, would have precluded, postponed, or otherwise affected the member's eligibility for enlistment or induction.

C. When released or discharged from active duty under the provisions of this Directive, a member shall be provided a document reflecting the period of service concerned in accordance with DoD Instruction 1336.1 (reference (c)). Upon request, the member will also be provided with written evidence of the characterization of service, if applicable.

In the case of an Honorable Discharge, an Honorable Discharge certificate (DD Form 256) will be awarded. Characterization of service upon completion of total military obligation will normally be the same as the characterization assigned upon release from active duty, unless other circumstances justify a different characterization. The General Discharge certificate (DD Form 257) and the Discharge Under Other Than Honorable Conditions certificate (DD Form 794) will only be issued in appropriate cases involving members discharged from a Reserve Component.

REASONS FOR AND CHARACTERIZATION OF SEPARATIONS

A. Expiration of Enlistment or Fulfillment of Service Obligation. A member separated by reason of expiration of the term of obligated service will be assigned an honorable characterization.

B. Convenience of the Government. A member separated by reason of the convenience of the Government will be assigned an honorable characterization. Separation by reason of the convenience of the government may be effected for such reason as may be prescribed by the Secretary of the Military Department concerned and will include the following:

1. General demobilization, reducing in authorized strength or an order applicable to all members of a class of personnel specified in the order.

2. Acceptance of a commission or appointment or acceptance into a program leading to a commission or appointment in any branch of the Armed Forces, for active duty only.

3. Immediate enlistment or reenlistment.

4. Erroneous induction, enlistment, extension of enlistment, which are defined as ones that would not have occurred had the true facts been known

to the Government and had the proper actions been taken based on those facts.

5. Early separation of personnel under various authorized programs or circumstances.

6. Pregnancy or childbirth involving women members, upon their request, unless the Secretary of the Military Department determines that retention is in the best interest of the service.

7. Inability to perform prescribed duties, repetitive absenteeism or nonavailability for worldwide assignment resulting from parenthood.

8. Conscientious objection in accordance with DoD Directive 1300.6 (reference (d)).

9. Sole surviving son/daughter and certain family members in accordance with DoD Directive 1315.14 (reference (e)).

10. Physical or mental condition, not a disability, which interferes with assignment to and/or performance of duty, including but not limited to chronic seasickness, airsickness, enuresis, etc.

11. Marginal performance. For purposes of standardization this program will be referred to as the marginal performer program by all Military Services.

a. Application of this provision is limited to members meeting the following criteria:

(1) Members separated under this program must be assigned to:

(a) basic/recruit training; (b) initial skill training immediately following basic/recruit training; or (c) an organizational unit for an appropriate period of evaluation, as determined by the Secretary of the Military Department concerned, but not less than 60 days.

(2) The members considered must be in their initial enlistment in that particular Military Service, serving in pay grade E-3 or below and are eligible until completion of 24 months of active service.

(3) The member must be medically qualified for separation.

(4) The member must have completed any unsuspended disciplinary punishment and not have received more than a combination of three Article 15 punishments or convictions by court-martial following completion of basic/recruit training.

(5) The member must not be about to stand trial for violation of the Uniform Code of Military Justice or have pending an unexecuted or a suspended punitive discharge.

b. Marginal or nonproductive performers are those identified by reasons of the member's:

(1) Failure to attain or maintain required job skill proficiency, either by associated inaptitude or lack of reasonable effort;

(2) Presence creating an administrative burden to the command due to repeated minor military or disciplinary infractions; or

(3) Performance which has not contributed to unit readiness and mission accomplishment as evidenced by below average performance ratings or demonstrated incapacity to meet performance standards.

c. As a minimum, the Military Services shall establish procedures wherein rebuttal by an individual being involuntarily separated will be considered by the separation authority.

C. Dependency or Hardship. A member separated by reason of dependency or hardship will be assigned an honorable characterization.

1. Separation may be directed when genuine dependency or undue hardship exists, and

a. The hardship or dependency is not of a temporary nature;

b. Conditions have arisen or have been aggravated to an excessive

degree since entry into the Service and the member has made every reasonable effort to remedy the situation;

c. The separation will eliminate or materially alleviate the condition; and

d. There are no means of alleviation readily available other than the separation.

2. Undue hardship does not necessarily exist solely because of altered present or expected income or because of separation from the member's family that causes the inconveniences normally incident to military service.

D. Minority. A member who is under age 17 at the time the member's minority is discovered shall be processed in accordance with paragraph E, enclosure (3). Where the member has attained age 17 prior to the discovery of this defect, the member shall be discharged with an honorable characterization upon application by the parents or guardian of a member made to the separation authority within 90 days after the member's enlistment where:

1. There is evidence satisfactory to the separation authority that the member is under 18 years of age; and

2. The member enlisted without the written consent of the member's

parent or guardian, if the member is not emancipated and is under the control of his/her parent or guardian.

E. Void/Voidable Enlistments. In those cases in which an individual was statutorily ineligible to enlist or court-martial jurisdiction is lacking over the individual because of the defective creation of an enlistment, the individual may be released from active service. Such individuals shall be issued a DD Form 214, Certificate of Release or Discharge from Active Duty, to allow them to account for periods under military control but such document shall not constitute a discharge and shall not assign a characterization of service. In those cases where the defect was waivable or is no longer present, such individuals may be retained under regulations prescribed by the Military Service concerned.

F. Disability. A member separated by reason of disability will be discharged with an honorable characterization. Disability exists when it has been determined that a member is physically unfit to perform the duties of the member's office, rank, grade, or rating, and is not entitled to retirement under the provisions of reference (b), chapter 61.

G. Personal Abuse of Drugs Other Than Alcoholic Beverages. A member will be discharged with an honorable characterization when identification as a drug abuser is based on evidence developed as a direct or indirect

result of a urinalysis test administered for identification of drug abusers, or by a member's volunteering for treatments for a drug problem under a drug identification and treatment program administered by the member's particular Military Service, and:

1. The member's record indicates a lack of potential for continued military service; or

2. Long-term rehabilitation is determined necessary and member is transferred to a Veteran's Administration or civilian medical facility for rehabilitation; or

3. Member has failed, through inability or refusal, to participate in, cooperate in, or complete a drug abuse treatment and rehabilitation program.

Note: It is essential to assure compliance with both the letter and spirit of the rule of law announced in United States v. Ruiz (23 USCMA 181, 48 CMR 797 (1976)). Extreme care should be exercised to assure that a member identified for separation under this provision is not discharged with less than an honorable discharge, based on some separate and distinct reason for discharge, unless it can be clearly demonstrated that evidence of drug use obtained through the identification process described herein was not directly or indirectly utilized in establishing such separate and distinct reason. It is desirable for field commanders to consult with legal personnel concerning implementation of this note.

H. Unsuitability. A member separated from active duty or a reserve unit by reason of unsuitability will be assigned an honorable characterization when it has been determined that the individual is not currently suitable for further military service. Factors considered under this category are normally of a non-voluntary nature, apparently beyond the control of the member, which make retention incompatible with the best interest of the Military Services. Where military/disciplinary infractions are involved, the member should be considered for processing for misconduct. Administrative separation action under paragraphs 2., 5., and 6. of this provision will not normally be initiated until a member has been counseled concerning deficiencies and afforded a reasonable opportunity to overcome them. Unsuitability is evidenced by one or more of the following:

1. Personality Disorder: As determined by a medical officer or contract physician (preferably a psychiatrist) or clinical psychologist and described in the Diagnostic and Statistical Manual (DSM-11) of Mental Disorders ^{1/}, American Psychiatric Association (reference (f)); which interferes with member's ability to adequately perform duties. Exception: Combat exhaustion and other acute situational maladjustments.

^{1/} Section on mental disorders, International Classification of Diseases and Injuries-8, Diagnostic and Statistical Manual (DSM-11) of Mental Disorders, 2nd Edition, Committee on Nomenclature & Statistics, American Psychiatric Association, Washington, D.C., 1968

2. Alcohol Abuse. A member who has been involved in alcohol related incidents and who is offered but fails through inability or refusal to participate in, cooperate in, or complete an alcohol abuse treatment and rehabilitation program.

3. Homosexual acts not falling within the purview of paragraph J.6. (including acts prior to the current period of service) and homosexual tendencies. Since any form of homosexuality is incompatible with military service, discharge processing is mandatory unless competent authority determines that the allegations are groundless.

4. Other aberrant sexual tendencies including, but not limited to, sexual reassignment, marriage between personnel of the same sex, voyeurism, and transvestism. Since other aberrant sexual tendencies such as these are incompatible with military service, discharge processing is mandatory unless competent authority determines that the allegations are groundless.

5. Apathy, defective attitude, and inability to expand effort constructively which is a significant observable defect apparently beyond the control of the member and elsewhere not readily describable.

6. Inaptitude which is a lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn.

7. Mitigated or extenuated cases of misconduct. If, in a separation proceeding for misconduct (paragraph J), an Administrative Discharge Board or Separation Authority determines the overall record clearly warrants an honorable characterization, the service member may be processed under this paragraph for unsuitability.

I. Security. Members separated by reasons of security will be discharged with an appropriate characterization and under conditions and procedures stipulated by the Secretary of Defense, as set forth in DoD Directive 5210.9 (reference (c)) and similar Directives applicable to the Coast Guard, when retention is clearly inconsistent with the interest of national security.

J. Misconduct. Members separated by reason of misconduct, except as provided in para J.11 below, will be given a discharge under honorable conditions (General) or discharged under other than honorable conditions (OTH) as the particular circumstances in a given case warrant. Administrative discharge action under paragraphs 1., and 2., of this provision will not normally be initiated until a member has been counseled concerning deficiencies and afforded a reasonable opportunity to overcome them. Discharge for misconduct is appropriate when it has been determined that an individual is unqualified for further military service because the member's military record in the current enlistment or period of obligated service evidences one or more of the following patterns of conduct, acts, or conditions:

1. Frequent involvement of a discreditable nature with civil or military authorities.

2. Frequent contraction of venereal diseases.

3. An established pattern of shirking which is the deliberate evasion of duty.

4. An established pattern showing dishonorable failure to pay just debts.

5. An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgements of a civil court concerning support of dependents.

6. Sexual deviation, including but not limited to:

a. Lewd and lascivious acts.

b. Sodomy.

c. Indecent exposure.

d. Indecent acts with or assault upon a child.

e. Aggravated in-service homosexual acts, to include:

(1) The attempt, solicitation or accomplishment of a homosexual act with a child under the age of 16 years, regardless of the cooperation of the child.

(2) The attempt, solicitation or accomplishment of a homosexual act accompanied by assault or coercion so that one party involved did not

willingly cooperate or consent or where the consent or cooperation was obtained through force, fraud or intimidation.

f. Prostitution which is the act of a male or female engaging in sexual activity for payment.

g. Other indecent acts or offenses.

NOTE: Since sexual deviation is incompatible with military service, discharge processing is mandatory unless competent authority determines that the allegations are groundless.

7. Drug abuse, which is the illegal or wrongful introduction into a military reservation, or the improper, illegal, or wrongful use, possession, sale, transfer, of any narcotic substance, intoxicating inhaled substance, marijuana, or controlled substance, as established by reference (h), Section 812, when supported by evidence not attributed to a urinalysis administered for identification of drug abusers or to a member's volunteering for treatment under the drug identification and treatment program administered by his/her particular Military Service.

8. Conviction by civil authorities (foreign or domestic), or action taken which is tantamount to a finding of guilty, of an offense for which the maximum penalty under the UCMJ (reference (b)) is death or confinement for one year or more; or which involves moral turpitude; or where the offender

is adjudged a juvenile delinquent, wayward minor, or youthful offender, or is placed on probation, or punished in any way, as the result of an offense involving moral turpitude. If the offense is not listed in the Manual for Courts-Martial, 1969 (Rev.), Table of Maximum Punishments, or is not closely related to an offense listed therein, the maximum punishment authorized by the U.S. Code or the District of Columbia Code, whichever is lesser, applies. A member is subject to discharge although he/she has filed an appeal or stated his/her intention to do so. However, it will be the general policy to withhold the execution of the approved discharge, pending outcome of the appeal. If the execution of the discharge is considered appropriate without waiting for final action on the appeal, the member may be discharged upon the direction of the Secretary concerned.

9. Procurement of a fraudulent enlistment, induction, or period of active service through any deliberate material misrepresentation, omission, or concealment which, if known at the time, might have resulted in rejection. The enlistment of a minor with false representation as to age without proper consent will not, in itself, be considered as fraudulent enlistment (see paragraph D, enclosure 3). Where there is no court-martial jurisdiction over the member because of the manner in which the individual's enlistment was effected, the individual shall be processed for separation in accordance with paragraph E, enclosure 3.

10. Prolonged unauthorized absence, continuous for one year or more.

11. "Unsatisfactory participation" in a unit of the Ready Reserve as defined in DOD Directive 1215.13 (reference (1)), under procedures outlined in enclosure 6 of this Directive. For ease of reference, this definition is repeated below:

Unsatisfactory participation by a member of the Ready Reserve consists of failure to fulfill individual obligation or agreement to be a member of a unit of the Ready Reserve as described in reference (b), Section 286a; or failure to meet the standards as prescribed by the Military Departments concerned for attendance at training drills, attendance at active duty for training, for training advancement, or for performance of duty.

Members separated under this provision who are determined to be mobilization assets will be transferred to the IRR and tentatively assigned an appropriate characterization of service, normally under OTH conditions. The proposed discharge procedures contained herein also apply to individuals who are released from active duty prior to expiration of term of service for the express purpose of joining a reserve component to complete their enlistment and who fail to satisfactorily participate.

K. Resignation or Request for Discharge for the Good of the Service and to Escape Trial by Court-Martial. Discharge under other than honorable conditions (OTH) is authorized, subject to procedures and safeguards specified in paragraph G, enclosure 4 of this Directive, upon resignation or request for discharge, where court-martial charges against a member

have been referred to trial for conduct which could result in the imposition of a punitive discharge, (the provisions of the Table of Maximum Punishments, Section B, paragraph 127c, *Manual for Courts-Martial*, 1969 (Rev.), are not applicable to requests for discharge pursuant to this paragraph).

L. Secretarial Plenary Authority. Notwithstanding the specific provisions of this or any other Directive, or any proceedings, decisions or action in accord with this or any other Directive, the Secretary concerned may direct the separation of any member with an Honorable or General characterization prior to the expiration of term of service, after determining it to be in the best interest of that Department.

AUTHORITY AND PROCEDURES FOR SEPARATION

A. Convenience of the Government. A separation with an honorable characterization may be approved by the member's commanding Officer or higher authority when it has been determined that the member merits separation.

B. Unsuitability. A separation with an honorable characterization may be approved by the commander exercising special court-martial jurisdiction or higher authority.

1. A member in pay grade E-3 or below with less than five years of total active and/or reserve military service shall be notified in writing of the proposed action and shall be afforded an opportunity to consult with counsel, if reasonably available, and to make a statement in the member's own behalf or to decline the opportunity in writing. This correspondence shall be filed in the member's permanent record.

2. A member in pay grade E-4 or higher or a member with five or more years of total active and/or reserve military service shall be separated by reason of unsuitability only in accordance with the safeguards and procedures specified in paragraphs D.2.a & b below.

C. Other Reason for Honorable Separations. A separation with an honorable characterization may be approved by the member's commanding

officer or higher authority when it has been determined that the member merits separation because of expiration of enlistment or fulfillment of service obligation, dependency or hardship, minority, disability, and personal abuse of drugs other than alcoholic beverages.

D. Misconduct. A discharge under honorable conditions (General) or discharge under other than honorable conditions (OTH) is authorized.

1. Separation Authority.

a. A discharge under honorable conditions (General) may be approved by a commander exercising special court-martial jurisdiction or higher authority.

b. A discharge under other than honorable conditions (OTH) may be approved by a commander exercising general court-martial jurisdiction or higher authority. This authority may be delegated to a general or flag officer in command who has a judge advocate or law specialist on his/her staff for cases arising in that command. Every action taken pursuant to such delegation shall state the specific authority therefor.

2. Safeguards and Procedures.

a. A member who is under military control shall be notified in writing of the basis for the proposed discharge action and advised that the member has the following rights:

(1) To present his/her case before an administrative discharge board.

(2) To be represented by counsel as described in paragraph F.3.a. below.

(3) To submit statements in the member's own behalf.

(4) To waive the above rights in writing. The member shall be given an opportunity to consult with counsel, prior to waiving such rights.

b. If a member waives his/her rights, the separation authority may disapprove the waiver and refer the case to an administrative discharge board, or direct retention on active duty, or direct discharge. If discharge is directed, the character of service will be specified except as provided in enclosure 2.

c. A member unable to appear in person before an administrative discharge board, by reason of confinement by civil authorities shall be advised (by registered mail or certified mail, return receipt requested) of the proposed discharge action, the type of characterization of service that may be assigned, and the fact that action has been suspended to give the member the opportunity to exercise the following rights:

(1) To have his/her case considered by an administrative separation board.

(2) To request appointment of a military counsel to represent the member and in the member's absence, present the member's case before an administrative separation board.

(3) To submit statements in the member's own behalf.

(4) To waive the foregoing rights, either in writing or by failing to reply to the letter of notification within a prescribed time limit.

d. A member of a reserve component not on active duty shall be notified of any intended discharge action. Notification may be effected by mailing the written notification to the reservist by registered or certified mail -- restricted delivery, return receipt requested, by delivering written notification to the reservist personally, or by leaving written notification at the reservist's dwelling house or usual place of abode with an adult person then residing therein and by mailing a copy to the reservist's last known address. No discharge action may be taken absent proof that a notification was effected. A return receipt signed by the reservist acknowledging receipt of written notification will satisfy this requirement as will an affidavit stating that the affiant delivered written notification to the reservist personally or that the affiant left written notification at the reservist's dwelling house or usual place of abode with an adult person then residing therein and that the affiant mailed a copy to the reservist's last known address. In all cases, the reservist shall be advised of the (1) proposed discharge

action, (2) type of characterization of service that may be assigned and (3) suspension of administrative discharge proceedings to give him/her the opportunity to exercise the following rights:

(1) To have his/her case considered by an administrative separation board.

(2) To request appointment of a military counsel to represent the member and in the member's absence, present the member's case before an administrative separation board.

(3) To submit statements in the member's own behalf.

(4) To waive the foregoing rights, either in writing or by failing to reply to the letter of notification within a prescribed time limit.

e. A member beyond military control by reason of unauthorized absence:

(1) May be discharged under other than honorable conditions in absentia under any of the following circumstances:

(a) When the prosecution of the member is apparently barred by statute of limitations (reference (b), Section 843). In those cases, a discharge under other than honorable conditions may be directed

at any time after it is determined that prosecution is so barred, provided that upon consideration of available extenuating, mitigating and aggravating factors in each case, the separation authority determines that the best interests of the Military Services will be served by issuance of such discharge.

(b) When the member who is an alien has gone to a foreign country where the U.S. has no authority to apprehend such a member under a treaty or agreement.

(c) When the member has been absent for a period of 18 months or more, on a case-by-case basis, as determined by the Secretary concerned.

(2) Shall be notified of the imminent discharge action and the effective date thereof by registered or certified mail, return receipt requested, forwarded to the record address of the member, or next of kin, as appropriate.

(3) Shall be subject to the separation limitations of (reference (b), Section 1163), if a member of a Reserve component.

E. Unauthorized Absence When Involuntary Discharge is Pending: Members who absent themselves without authority while being processed for involuntary discharge need not be returned to military control solely for execution of

the discharge. Notwithstanding the provisions of D.2.e. above, an approved administrative discharge may be executed if:

1. Processing, at least insofar as the member's presence is required, was complete at the time the unauthorized absence began; and

2. A commander exercising special court-martial jurisdiction determines that the member's return to military control for disposition of the unauthorized absence is not required.

F. Administrative Discharge Board

1. Composition. An administrative discharge board shall be comprised of at least three experienced commissioned officers at least one of whom shall be serving in the grade of major/lieutenant commander or higher, except as noted in (a) below and may include a nonvoting recorder. The following additional requirements apply:

- a. If the respondent is a member of a regular component, the respondent may request in writing that an enlisted member be appointed to sit as a member of the board. All enlisted personnel appointed as members shall be serving in pay grade E-7 or above and shall be senior to the respondent. An enlisted member so appointed will fulfill the requirement for one officer member. (May not be applied to reservists because of reference (b), Section 1163).

b. If the respondent is an enlisted member of a Reserve component or holds an appointment as a Reserve commissioned or warrant officer, the membership shall include a majority of Reserve officers, if reasonably available. Where a Reserve majority is not available, the board shall include at least one Reserve component officer. Voting members shall be senior to the respondent's Reserve grade.

c. If the respondent is an enlisted woman, the board shall, upon written request of the respondent, include a female as a voting member, if such person is reasonably available. In the event of non-availability, the reason shall be stated in the record of proceedings.

d. If the respondent is a member of a minority group, the board shall, upon the written request of the respondent, include as a voting member a minority group member, if such person is reasonably available. When requested, the appointed board member should normally be of the same minority group as the respondent; however, nonavailability of a member of the same minority group shall not preclude convening the board. In the event of nonavailability, the reason shall be stated in the record of proceedings.

e. A respondent who asks for special representation on the board in accordance with paragraphs c and d above shall not as a member of right be entitled to a representative from each such category. The respondent shall elect, in writing, the category from which the special representative is preferred.

2. Procedures. The board functions as an administrative rather than a judicial body. Strict rules of evidence need not be observed. However, the president may impose reasonable restrictions as to relevancy, competency and materiality of matters considered. When the board meets in closed sessions, only voting members shall be present. The proceedings of the board shall be kept as prescribed by the Secretary of the Military Department concerned but, as a minimum, shall contain a verbatim record of the findings and recommendations. The findings of the board must be supported by a preponderance of the evidence, which simply means evidence which is of greater weight or more convincing than that which is offered in opposition to it. Based upon the findings, the board shall recommend one of the following:

a. Retention.

b. Discharge for a specified reason with the appropriate characterization of service, according to the applicable Service regulations implementing this Directive.

c. Discharge in accordance with the above paragraph, but that the discharge be suspended on probation for a period not less than six months or more than one year, except that the expiration of the respondent's enlistment shall automatically terminate any probationary period.

3. Rights of the Respondent. A respondent has the following rights:

a. Counsel.

(1) Counsel certified in accordance with Article 27(b), UCMJ (reference (b)), shall be appointed to represent the respondent during the course of the proceedings.

(2) The respondent may be represented by military counsel of the member's own choice provided that the requested counsel is reasonably available as determined under regulations of the Military Service concerned. If requested counsel is made available to represent the respondent, detailed military counsel shall be relieved.

(3) The respondent may employ a civilian attorney at the member's own expense. A respondent who retains a civilian attorney is not entitled to select military counsel. However, appointed counsel will be made available to assist the civilian attorney.

(4) The respondent may request the appearance before the board of any witness on active duty whose testimony is believed to be pertinent to the respondent's case. The respondent will address the request to the recorder, or in the absence of a recorder, to the convening authority. If the witness is in the same geographical area as the board is scheduled to meet, the hearing will be postponed or continued for a reasonable period of time to permit attendance of the witness. If the requested active duty witness is not in the geographical area (100 mile radius) of the board's scheduled meeting place, the convening authority will determine whether the personal testimony of the witness is necessary. In this

regard, the decision of the convening authority is final. If the convening authority determines that the personal testimony of the witness is necessary, the hearing will be postponed or continued to permit attendance of the witness. If the convening authority determines that the personal testimony of the witness is not necessary or if the witness' commanding officer determines that military necessity precludes the witness' attendance at the hearing, the hearing shall be continued or postponed to provide the respondent with the opportunity to obtain a written statement from the requested witness.

(5) The respondent may, at any time before the board convenes or during the proceedings, submit any answer, deposition, sworn or unsworn statement, affidavit, certificate, or stipulation. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

(6) The respondent may or may not submit to examination by the board. The provisions of reference (b), Section 831 Article 31, apply.

(7) The respondent and the respondent's counsel may question any witness who appears before the board.

(8) Failure of the respondent to assert any of these rights, after the respondent has been apprised of same, cannot be considered as

a bar to the board proceedings, findings, and recommendations.

4. Actions by Separation Authority. Upon receipt of the record of board proceedings, the separation authority may take one of the following actions:

- a. Approve the board's recommendations and direct their execution.
- b. Approve the board's recommendation for separation but change the characterization of service to a more favorable one. The separation authority shall not downgrade the characterization of service.
- c. Approve the board's recommendation for separation, but change its basis when the record indicates such action would be appropriate, except that he/she shall not designate misconduct as the basis when the board has recommended separation for unsuitability.
- d. Approve the discharge, but suspend its execution for a specified period of probation except in cases of fraudulent enlistment.
- e. Disapprove the findings or the recommendation for discharge and retain the member in the Service.
- f. May recommend separation to the Secretary concerned, pursuant to paragraph L (enclosure 3), in the event of a board recommendation for retention or probation, if he/she believes that separation is warranted by the circumstances of the particular case.

g. Disapprove the findings and recommendations and refer the case to a new board if the separation authority finds legal prejudice to the substantial rights of the respondent. No member of the new board shall have served on a prior board which considered the same matter. The record of the proceedings of the earlier board, minus the findings, recommendations, and prejudicial matter, may be furnished the successor board.

G. Resignation or Request for Discharge for the Good of the Service and to Escape Trial by Court-Martial. A member may be issued a discharge under other than honorable conditions without board action, provided he/she has been afforded the opportunity to consult with counsel and certifies in writing that he/she understands (a) he/she will receive a discharge under other than honorable conditions, (b) the adverse nature of such a characterization and possible consequences thereof and (c) specifically waives the right to an administrative discharge board.

H. Conditional Waiver. Use of a conditional waiver, as described below, is authorized at the discretion of the Military Departments. A conditional waiver is a statement initiated by a member waiving those rights associated with administrative separation board proceedings, contingent upon receiving a characterization of military service higher than the least characterization authorized for issuance for the specific reason of separation in the member's situation. If such a statement of waiver is accepted, the particular circumstances of the member's military service warranting the higher characterization will be specifically identified by the member's commanding officer, or higher authority, in the separation correspondence to be filed in the member's military personnel record.

SUSPENSION OF EXECUTION OF APPROVED SEPARATION

Except in the case of fraudulent enlistment, the separation authority or higher authority may, prior to the expiration of the member's enlistment or period of obligated service, suspend execution of an approved separation for a specified period, if the circumstances of the case indicate a reasonable prospect for rehabilitation. During the period of suspension, the member shall be afforded an opportunity to demonstrate that he/she is capable of behaving properly for an extended period under varying conditions and that the member can perform assigned duties efficiently.

1. Upon satisfactory completion of the probationary period, execution of the approved separation will be cancelled automatically.

2. Additional misconduct on the part of the member during the probationary period, or actions which constitute substandard performance of duty or demonstrate characteristics of unsuitability may establish the basis for one of the following actions:

a. Punitive or new administrative action may be initiated, notwithstanding the suspension of execution of the approved separation.

b. Vacation of the suspension and execution of the discharge. Prior to taking such action, the member will be afforded the opportunity to make a written statement in rebuttal or explanation of the conduct

which forms the basis to vacate the suspension. Where the member has absented himself/herself and is beyond military control for 15 or more days, the suspension may be vacated and the discharge executed without affording the member the opportunity to make a statement.

PROCEDURES FOR SEPARATING READY RESERVISTS

BY REASON OF UNSATISFACTORY PARTICIPATION

A. Nothing in this enclosure precludes order to active duty or active duty for training as prescribed by DoD Directive 1215.13, Title 10, United States Code, 270 and 673a, or Executive Order 11366 (references (i), (b) or (j), respectively).

B. When a member who has had less than 24 months of active duty (including active duty for training and annual training) is identified as an unsatisfactory participant as prescribed in DoD Directive 1215.13 (reference (i)), the separation authority or higher authority may convene an administrative discharge board to consider and recommend appropriate disposition. Prior to convening such a board, Reserve unit commanders are encouraged to make every effort to determine the reason for and must document the failure to participant. The findings and recommendations of such board may include:

1. Retention.
2. Transfer to the IRR.
3. Discharge by reason of unsatisfactory participation, normally with a characterization under other than honorable conditions.

4. Separation under other provisions of this Directive, as appropriate.

C. No Ready Reservist may be discharged on the basis of unsatisfactory participation with a discharge under other than honorable conditions unless the notification procedures described in paragraph D.2d of enclosure 4 are followed and the Reservist is afforded the right to present his/her case before an administrative discharge board in accordance with paragraph B above and other procedural provisions of this Directive. Failure by a Reservist to respond within 30 days of delivery of notification letter will be considered to be a waiver of rights as provided in enclosure 4.

REFERENCES

- (b) Title 10, United States Code.
- (c) DoD Instruction 1336.1, "Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series),"
- (d) DoD Directive 1300.6, "Conscientious Objectors"
- (e) DoD Directive 1315.14, "Special Assignment and Discharge Policies for Family Members"
- (f) Diagnostic and Statistical Manual (DSM-11) of Mental Disorders, American Psychiatric Association
- (g) DoD Directive 5210.9, "Military Personnel Security Program" June 19, 1956
- (h) Title 21, United States Code, 812, "Schedule of Controlled Substances - Establishment"
- (i) DoD Directive 1215.13, "Unsatisfactory Performance of Ready Reserve Obligation"
- (j) Executive Order, 11366, "Assign Authority to Order Certain Persons in Ready Reserve to Active Duty"

CHAPTER 2

ADMINISTRATIVE DISCHARGE/SEPARATION SYSTEM

I. PURPOSE

The purpose of the administrative discharge system is to provide a formalized means of termination of military service under the broad authority granted by the Congress for those completing their military service obligation or for those unable to do so. A detailed description of the development of the administrative discharge system is set out in Appendix A. The court-martial system also provides for termination as part of the punishment for conviction of a crime.

This study does not discuss the court-martial system, except as it pertains to requests for administrative discharge in lieu of court-martial, in comparison of certain due process requirements, and for statistical purposes.

The present administrative discharge system can be divided into three principal sections: reasons for discharge or separation, characterization of service and procedures including due process considerations.

II. MAJOR FEATURES

Reasons for Discharge/Separation ^{1/}

There are more than thirty reasons for discharge (Enclosure 2 to Appendix B). They can generally be grouped under the headings of expiration of term of service, convenience of the Government, unsuitability, and misconduct. The first category involves those individuals who complete

^{1/} Throughout this chapter, the word "discharge" is an abbreviation -- for ease of reading -- which includes the process of separation or release from active military status, as well as actions which accomplish a complete severance of all military status. It also includes the assignment of a reason for such discharge and characterization of service.

their active service obligation. Convenience of the Government principally consists of reasons which are not directly related to the performance or conduct of the servicemember. For example, personnel returning from overseas assignments with insufficient retainability for further assignment, reduction in strength, the phasing out of a weapons system, conscientious objection or parenthood could result in the discharge of groups of personnel or of particular individuals. Convenience of the Government also includes the early discharge of those whose performance of duty is marginal and have demonstrated little potential for further service. Individuals may also be discharged for unsuitability. That is, their mental ability, character, or attitudes are incompatible with the military regimen. Finally, some individuals' performance or conduct is substandard to the extent that they must be discharged for misconduct to maintain efficiency and good order, although not serious enough to warrant trial by court-martial.

Characterizations of Service

Periods of service covered by discharges are characterized as Honorable, Under Honorable Conditions (General), and Under Other Than Honorable Conditions (OTH). These categories are designed to reflect the caliber of conduct and performance rendered. An honorable characterization is issued to recognize proper military behavior and proficient performance of duty. It is the standard form of recognition for an individual's honest and faithful performance. General discharges are issued to those whose military record is not sufficiently meritorious to warrant an honorable discharge, but whose performance or conduct was not so substandard as to warrant separation under other than honorable conditions. Recipients of

Honorable and General discharges are normally eligible for all veteran's benefits. Discharges under other than honorable conditions are issued for serious or repeated misconduct. Recipients of OTH discharges, except in certain prescribed cases, generally do not qualify for veterans' benefits.

Procedures - Including Due Process Considerations

Appendix A shows that since 1948, there have been few changes in either the reasons for discharge or the characterization process. The majority of changes to the administrative discharge system have affected procedure. This is because of the continuing evolution of the concept of military due process, as viewed both within the military and as viewed by interested parties within the civilian sector. Due process under the Fifth Amendment to the Constitution requires that, when an individual is deprived of a liberty or property entitlement, the method used to affect the deprivation must be fair. Since there is no universal agreement as to what constitutes a liberty interest, a property interest, or fairness, the applicability and specific requirements of due process in a particular proceeding are frequently in dispute. Moreover, the requirements of due process change from one proceeding to another, depending on the gravity of the potential outcome. Critics of the current administrative discharge system endeavor to impose on it the full range of due process requirements found in both the court-martial system and the civilian sector. In fact, some proponents for change have proposed a legislative basis for the system. Some of the more recent bills are highlighted at Appendix C. Defenders of the current system react adversely to these overtures in an attempt to preserve distinctions between the two systems,

because of their different purposes and consequences, for practical considerations or for both.

Indeed, the purposes and consequences of the administrative discharge system are in fact quite different from the court-martial process. A court-martial conviction is a public record identifying the individual as a criminal. A court sentence can include confinement, a fine, forfeiture of pay, loss of grade, and a punitive discharge. The conviction and accompanying punitive discharge severely impact on post-service veteran's benefits, reputation, and employability. In contrast, an administrative discharge is not a matter of public information unless the individual elects to make it one. Administrative discharge proceedings cannot result in a criminal record, incarceration, loss of grade, or forfeiture of money. Although less than honorable characterizations of service of may create a blot on an individual's record, their impact is not as severe as a punitive discharge in its impact on post-service life. Therefore, there is no requirement or need -- either in law or based upon equity considerations -- for the procedural aspects of the two systems to be in parallel. However, as noted previously, military due process is a constantly evolving concept, and the general trend has been toward greater protection of the individual (particularly when the discharge is for adverse reasons or when an OTH discharge is possible).

Individuals recommended for a general (under honorable conditions) discharge receive notice, counsel, and an opportunity to rebut the basis for discharge. Those recommended for an other than honorable discharge, and those in grade E-4 and those who have five years of service or more are entitled to notice, a board hearing, counsel, minority membership on

the board if available, testimony or silence, challenge for cause, cross-examination, and presentation of evidence. All other than honorable discharges must be approved by a higher echelon commander upon advice of his or her judge advocate.

If the board recommends separation with an other than Honorable Discharge, the record of the proceedings is forwarded to a higher level command for review by a judge advocate and approval or disapproval by the commander (normally an officer of two star rank). These entitlements are provided because of the possibility that an OTH discharge may be issued. As noted, because it is the most severe administrative discharge which can be issued, and has the most potential for adverse impact on post-service reputation, veterans' benefits, and employability, due process provides for notice, counsel, and a full hearing by an impartial board to insure that an OTH discharge with its potential stigma is imposed only after careful evaluation of all available evidence presented by both sides. A detailed discussion of the evolution and requirements of due process in administrative proceedings is found at Appendix D. In this regard, an accepted requirement of military due process is that each Military Department must follow its own regulations throughout the proceedings. If the discharge processing varies from the governing directives in some material respect, which prejudices the individual, the adverse results of an involuntary discharge may be set aside because of a denial of due process. Extensive post-service appellate procedures exist with each Department's Discharge Review Board or Board for Correction of Military or Naval Records.

Another due process consideration of principal concern to this study

is the consistency or uniformity of assignment of reasons for discharge and application of the characterization based on the DoD directive. If individuals are disqualified for further service for the same actual cause, but are separated from the Services for a different listed reason and with different types of characterization of discharges, a due process or equal protection challenge to the system could be lodged, particularly where there is no rational basis for these differences. Appendix E shows the extent to which the basic rules in the DoD directive have been dissimilarly interpreted. Chapter 3 shows the extent to which these interpretations have led to unacceptable differences in results.

III. CURRENT MAJOR ISSUES

The following is a summary of the major issues identified by the Study Group with a brief statement of objective, discussion, position of the Military Departments, and position and recommendations of the Study Group. This summary is followed by the actual issues as developed by the Study Group with the responses of the Military Departments.

Issue Number 1 - Whether or not the "Honorable Discharge" for "honorable" service in the Armed Forces should be retained.

Objective: To achieve agreement/resolution on a statement of "honorable" service.

Discussion: The strength of the military hierarchal structure, which requires very strong personal interrelationships and group cohesion for success under the stress of combat, is the subjective - and necessarily personal - evaluation of performance and conduct. DoD Directive 1332.14, "Enlisted Administrative Separations," establishes a personnel management system which combines objective standards of performance and personal

conduct with a subjective evaluation process. It permits not only the separation of those completing a period of service, but early elimination of the nonproductive and the characterization of both in a manner consistent with the high ethics of military service.

Proposal: That the "Honorable" Discharge be retained and DoD Directive 1332.14 be modified to include a positive concept statement of "honorable service."

Positions: Army - concurs, with minor suggested language change; Navy - concurs; Air Force - concurs; Study Group - concurs and recommends adoption of proposed language which has been included in the proposed directive.

Issue Number 2 - Should the three-tiered administrative separation system be retained.

Objective: To achieve agreement/resolution on continuation of the three-tiered system or agreement/resolution on a modified system of characterization.

Discussion: The Military Services must have a system for discharging persons for cause. That system must be as fair and equitable as possible. It also must be dynamic and responsive to societal needs. Above all, it must comport with the time-honored military custom and strong military tradition of honoring good and faithful service at the end of a period of service. The present administrative system of Honorable, General (under honorable conditions) and Discharge Under Other Than Honorable Conditions (formerly Undesirable Discharge) resulted from a Joint Armed Services Committee formed in 1947. This committee recommended the

addition of the General Discharge. It recognized that a simple bifurcated system was not as equitable or as useful as a three-tiered system since a two-tiered system did not clearly provide a characterization for those persons whose service was neither honorable nor less than honorable within the time-honored meanings of these terms.

There is no way to acknowledge meritorious service without conversely acknowledging less than meritorious service, if only by omission of honorable recognition. It is further believed that former service members should have a right to a record attesting to the quality of service which they can use as they desire to meet requirements imposed by civilian society.

Proposal: Reaffirm the requirement for the three-tiered administrative separation system.

Positions: Army - final position still pending; however, initial evaluation was that the present three-tiered system does not meet the current needs of the Army. There is a consensus within the Army that some change is essential. Navy - concurs with a recognition that changes are desirable, but should be made within the framework of the three-tiered system. Air Force - concurs. Study Group - concurs with the concept, but recommends retention of the three-tiered system with several significant modifications, including a provision for non-characterization of certain discharges.

Issue Number 3 - Whether or not the U.S. Armed Forces should discharge in-absentia.

Objective: To achieve agreement/resolution on utilization of discharge in-absentia policies.

Discussion: It has historically been the desire of the U.S. Armed Forces to have absentees returned to military control as soon as possible. Upon their return to military control, disciplinary action or administrative disposition of these absentees will be determined on an individual basis. Each case is then reviewed on its own merits based on the facts and circumstances surrounding the absence. Fair and just disposition of absentees is a prerequisite to the effective administration of military justice.

It is a fact that unauthorized absence is a violation of law which, dependent on the circumstances, carries a wide range of punishment options. Some people advocate a decriminalization of AWOL during an all-volunteer era and while we are at peace. If individual service members are permitted to depart from their units whenever they so choose, it may be extremely difficult for the military forces to effectively respond to an emergency. This potentially adverse effect on combat readiness, discipline, and morale in such circumstances could result in grave consequences to this Nation.

The discharge in-absentia policies have been periodically reviewed in the past with the intent to resume the exercise of issuing Other Than Honorable Discharge to members who have been on unauthorized absence in excess of one year. However, the conclusions reached by the Department of Defense during these past reviews was that military justice would best be served by continuing the policy in an inoperative posture.

Proposal: Specifically prohibit discharge in-absentia, except for aliens or members barred by the statute of limitations from prosecution for unauthorized absence.

Positions: Army and Air Force - concur; Navy - nonconcur and recommends optional authority for discharge in-absentia for members absent for more than 180 days.

Resolution: DepSecDef memorandum of 23 May 1978 to the Secretaries of the Military Departments resolved this issue by adopting the proposal and adding a provision for the Secretaries of the Military Departments to authorize discharge in-absentia on a case-by-case basis to those absent for 18 months or more (see Appendix F).

Issue Number 4 - Whether the DoD directive governing enlisted administrative separations should be modified in order to force more administrative discharges into the punitive system under the Uniform Code of Military Justice as a means of reducing or stemming attrition.

Objective: To achieve agreement/resolution on the role of DoD Directive 1332.14 in the processing of cases which may also be processed under the Uniform Code of Military Justice.

Discussion: The administrative discharge system provides the armed forces with an expeditious means of separating, with an appropriate characterization of service, those members unable to adapt to service life and those who clearly demonstrate they are unqualified for retention. At the same time, the DoD directive recognizes that the military member has certain rights which must be protected. On the other hand, the Uniform Code of Military Justice is a comprehensive criminal code which regulates the conduct of members of the armed forces. The Code's primary goal is to ensure a high standard of morale and discipline, which in turn promotes the efficiency of the fighting forces, while at the same time protecting the constitutional rights of the military member.

Proposal: That policy changes not be adopted that would force more cases into the punitive system or that would restrict a commander's use of the administrative discharge as an alternative to punitive action in appropriate cases.

Positions: Army, Navy and Air Force - concur. Study Group - concurs in concept, but recommends language in the proposed directive concerning the provision for discharge in lieu of court-martial -- based upon due process considerations -- which tends to restrict the use of this provision.

Issue Number 5 - Whether or not the marginal performer program (including the expeditious discharge program) is causing unnecessary attrition.

Objective: To examine the provisions for discharging marginal performers and recommend corrections if required.

Discussion: The marginal performer program has served as a cost effective and expeditious means of separating non-performers prior to those individuals becoming the subject of more severe administrative/disciplinary action. The administrative discharge system, and especially the marginal performer program, have been criticized as a result of a perception that the Services are taking the "easy way out" rather than exercising proper leadership and enforcing traditional disciplinary alternatives. Recent attrition levels have tended to support this perception. However, the marginal performer program is only one facet of the administrative separation process and may not be the sole cause of the first term attrition problem.

Proposal: Reaffirm current DoD guidelines for the marginal performer program.

Positions: Army and Navy - concur; Air Force - concurs, with comment that current guidelines are lacking in certain specifics which results in significant differences in program application among the Services, also recommends certain changes to standardize the program. Study Group -

nonconcur and recommends significant changes in the proposed directive to insure program standardization and to further limit those subject to this provision.

IV. CONCLUSIONS

The Study Group unanimously concludes that the concept of the current enlisted administrative discharge system -- founded on broad legislative authority -- is sound and is essential to the effective administration of the Military Services. In developing the major issues, it became apparent that the dynamics of change in our society affect all three major features of the system. These features (reasons, characterization and procedures) must be updated to comport with existing circumstances. The recommendations made by the Study Group on the major issues are reflective of this conclusion and, in conjunction with the many other changes recommended, are designed to coordinate and accommodate the diversity of interests affected by the system. These include a special sensitivity to the rights of the individuals affected, as well as the practical and unacceptable impact an over lenient system would have on first-term attrition. Both of these factors were central to another conclusion of the Study Group calling for a more unifying control directive which would provide a basis for narrowing the disparities in Service applications of both reasons for separation and characterization of service. These disparities in support of this conclusion are more fully discussed in Chapter 3.

Index to Major Issue Papers

DASD(MPP) memo dtd 1Nov77 - Issue 1: definition of honorable service
Issue 2: three-tiered administrative
discharge system

Army memos dtd 16Feb78 & 14Nov77
Navy memo dtd 21Mar78
AF memo dtd 14Nov77

DASD(MPP) memo dtd 21Nov77 - Issue 3: discharge in-absentia provision
Issue 4: adjustments to DoDD 1332.14

Army memo dtd 6Dec77
Navy memos dtd 8Feb78 & 18Jan78
AF memo dtd 13Jan78

DASD(MPP) memo dtd 8Feb78 - Issue 5: marginal performer/expeditious
discharge program

Army memo dtd 28Feb78
Navy memo dtd 21Mar78
AF memo dtd 15Mar78



MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS

(Military Personnel Policy)

ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

November 1, 1977

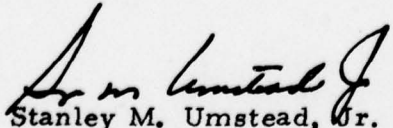
MEMORANDUM FOR Assistant Secretary of the Army (M&RA)
Assistant Secretary of the Navy (MRA&L)
Assistant Secretary of the Air Force (MRA&I)

SUBJECT: Study of Administrative Discharge System

Assistant Secretary of Defense (MRA&L) memorandum of 3 September 1977 appointed an interservice working group to accomplish this study with certain delineated goals.

As issues are identified by the working group, issue papers will be circulated to the Military Departments and the OJCS for comment. Two of these papers are attached. The first deals with the definition of honorable service; the second with reconfirmation of the three-tiered administrative discharge system. Request your comments/concurrence on these issues by 14 November 1977.

Because of the requirement to submit the study with the FY 1979 budget request, the responses to these issues are time sensitive. Advance action copies will be provided directly to the working group members whenever possible. Your personal support in responding to this rather formidable task will be appreciated.


Stanley M. Umstead, Jr.
Major General, USAF
Deputy Assistant Secretary

Attachments

cc: Dir, Jt Staff, OJCS

Issue Number 1

Issue:

Whether or not the "Honorable Discharge" for "honorable" service in the U.S. Armed Forces should be retained.

Background:

The Administrative Separation system for enlisted personnel is based on DoD Directive 1332.14 which, as currently constituted, contains no positive statement of purpose regarding standards of performance and conduct underlying an honorable discharge, except the generalization for good and faithful service and proper military behavior and proficient performance of duty.

Objective:

To achieve agreement/resolution on a statement of "honorable service."

Discussion:

The strength of our military hierarchal structure, which requires very strong personal interrelationships and group cohesion for success under the stress of combat, is the subjective - and necessarily personal - evaluation of performance and conduct. The Administrative Separation Directive establishes a personnel management system which commingles objective standards of performance and personal conduct with a subjective evaluation process. It permits not only the separation of those completing a period of service, but early elimination of the nonproductive and the characterization of both in a manner consistent with the high ethics of military service. This concept is being subjected to certain strong pressures which could lead to a totally objective system. A recent example is PL 95-126 which requires publication of written standards for use in recharacterization in the discharge review process.

Comment:

In order to preserve the efficacy of the traditional honorable discharge/service concept, it is imperative that the DoD and the Military Departments articulate a positive statement of purpose for "honorable service" for use as the underpinning of all the various systems employing subjective evaluation or characterization of service (i.e., personnel evaluations, UCMJ, administrative separation, discharge review, and records correction).

Proposal:

That the "Honorable Discharge" be retained and that paragraph A, "Guidelines," of enclosure 4 of DoD Directive 1332.14 be amended to read as follows:

Minimum standards of acceptable personal conduct and performance of duty for U.S. Armed Forces personnel are found in the UCMJ and Service regulations, which embody time-honored customs and traditions of the U.S. military services. "Honorable service" in the U.S. military context is the basic designation used to recognize the manner in which a servicemember performed his/her service, based upon a wide and variable range of related attributes, such as courage, fidelity, honesty, trustworthiness, and effectiveness, as subjectively measured within the military chain of command. Therefore, when separated, a member's service shall be characterized to reflect the degree of honorable service rendered for the period concerned, as follows:

Issue Number 2

Issue:

Whether or not the three-tiered administrative separation system should be retained.

Background:

The three-tiered administrative separation system is based on DoD Directive 1332.14, "Enlisted Administrative Separations," which, as currently constituted, provides for all reasons for separation of enlisted personnel plus characterization at time of separation as either honorable, under honorable conditions, or under other than honorable conditions.

Objective:

To achieve agreement/resolution on continuation of the three-tiered system or agreement/resolution on a modified system of characterization.

Discussion:

The Military Services must have a system for discharging persons for cause. That system must be as fair and equitable as is possible. It also must be dynamic and responsive to societal needs. Above all, it must comport with the time-honored military custom and strong military tradition of honoring good and faithful service at the end of a period of service. The present administrative system of Honorable, General (under honorable conditions) and Discharge Under Other Than Honorable Conditions (formerly Undesirable Discharge) resulted from a Joint Armed Services Committee formed in 1947, to conduct a thorough and extensive review of administrative discharges. This committee recommended the addition of the General Discharge since it recognized that a simple bifurcated system was not as equitable or as useful as a three-tiered system. This

AD-A060 521 ASSISTANT SECRETARY OF DEFENSE (MANPOWER RESERVE AFFA--ETC F/G 5/9
REPORT OF THE JOINT-SERVICE ADMINISTRATIVE DISCHARGE STUDY GROU--ETC (U)
AUG 78

ASSISTANT SECRETARY OF DEFENSE (MANPOWER RESERVE AFFA--ETC F/G 5/9
REPORT OF THE JOINT-SERVICE ADMINISTRATIVE DISCHARGE STUDY GROU--ETC (U)
AUG 78

NL

AD
A060521

was especially true in a post-service context, since a two-level system did not clearly provide a characterization for those persons whose service was neither honorable nor less than honorable within the time-honored meanings of these terms.

Unfortunately, there is no way to acknowledge meritorious service without conversely acknowledging less than meritorious service, if only by omission of honorable recognition. It is further believed that former service members should have a right to a record attesting to the quality of military service which they can use as they desire to meet requirements imposed by civilian society (e.g., seeking veterans' benefits, both State and Federal, a reference for civilian employment, applications to colleges and universities, and to various Governmental agencies, etc.). By elimination of the middle option (General - under honorable conditions), there would be no practical way to draw a distinction between persons who have performed their service meritoriously and the relatively few whose service, though satisfactory, does not warrant honorable recognition. Moreover, elimination of the middle option could result in an increased number of cases ultimately disposed of by court-martial or adverse board proceedings, as military commanders seek to protect the integrity of the Honorable Discharge. Less than honorable discharges are not issued indiscriminately or capriciously; they result after application of a system which includes procedural safeguards to ensure that an individual's rights are adequately protected and that the character of the discharge accurately reflects the quality of the individual's service.

Comment:

The above discussion was developed and coordinated as the Departmental position during the formulation of the Special Discharge Review Program.

There is known Congressional interest in modifying the present system from 3 to 2 tiers. Also, there are indications that certain similar modifications are being unilaterally considered within one of the Military Departments. Systems which recharacterize periods of military service are currently undergoing change as a result of judicial (Antioch lawsuit) and Congressional action (P.L. 95-126).

Proposal:

Reaffirm the requirement for the three-tiered administrative separation system.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

↓
16 FEB 1978

MEMORANDUM FOR THE ASSISTANT SECRETARY OF DEFENSE (MANPOWER,
RESERVE AFFAIRS AND LOGISTICS)

SUBJECT: Study of Administrative Discharge System

Reference is made to the memorandum from this office for the
DASD(MPP), subject as above, dated 14 November 1977 (Inclosure 1).

The development of the Army position concerning Issue 2, whether
the three-tiered Administrative Discharge System should be retained,
has required more time than was anticipated. Although the Army Staff
recommendations have been received, it is not yet possible to present
a Department of the Army position.

From our initial study of the Administrative Discharge System,
it is apparent that the Army does not believe that the present three-
tiered system meets the current needs of the Army. There appears to
be a consensus opinion that some changes are essential. However,
until such time as further study is completed, we are not prepared
to provide specific Department of the Army recommendations for changes
to DOD Directive 1332.14.

As soon as we have established the Army position and recommendations
for a revised system of administrative discharges, you will be advised.

1 Incl
As stated

Robert L. Nelson
Assistant Secretary of the Army
(Manpower and Reserve Affairs)



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

14 NOV 1977

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY
PERSONNEL POLICY)

SUBJECT: Study of Administrative Discharge System

This replies to your request for the Army position on numbered issues one and two developed by the Interservice Working Group for Study of the Administrative Discharge System.

Issue 1: The Army concurs that the "Honorable Discharge" should be retained and that a statement of "honorable service" is desirable. The following difficulties are perceived in the proposed amendment to paragraph A of inclosure 4 to DOD Directive 1332.14.

- o The reference to "the UCMJ and Service regulations" as the location of minimum standards of acceptable conduct and performance of duty is misleading. The UCMJ and service regulations generally delineate misconduct; they do not set forth specific minimum standards of conduct as the proposed language indicates.

- o Any reference to the "time-honored customs and traditions" of the military services would become a point of focus for critics who seek to change the present system of characterizing service. These "customs and traditions" are looked upon by the critics as too vague and subjective.

- o Although the characterization of a member's service necessarily requires a subjective analysis by the member's commander, a statement of purpose which emphasizes this subjectivity by referring to general character traits would provide additional grounds for critics of the current administrative discharge system.

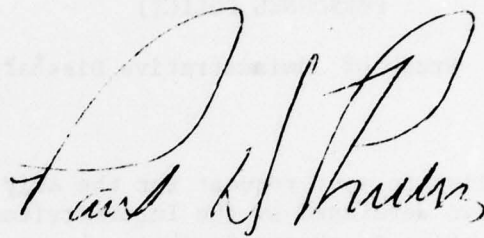
In lieu of the proposed wording, recommend the wording shown on the attached inclosure be added to the current language of the cited paragraph.

DAPE-MPE-PS

SUBJECT: Study of Administrative Discharge System

Issue 2: The Army Staff is currently developing the service position on whether or not the three-tiered Administrative Discharge System should be retained. While we recognize the urgency of the request, it is also imperative that we have sufficient time to fully evaluate and staff alternatives to the current system. We expect that we can provide our position to you by 30 November 1977.

1 Incl
as



Paul D. Phillips
Deputy Assistant Secretary of the Army
(Manpower and Reserve Affairs)

CHARACTERIZATION OF SERVICE

- A. Guidelines. When separated under the provisions of this Directive, a member shall be provided a certificate reflecting the character of his/her service for the period concerned.

(Added)

"Honorable service" in the U.S. military context is the basic designation used to recognize the manner in which a servicemember performed his/her service, based upon a wide and variable range of related attributes, such as courage, fidelity, honesty, trustworthiness, and effectiveness. The character of service will be based upon the personal conduct of the servicemember and the manner in which the member performed his/her duties, as reflected in the servicemember's military record and as measured within the military chain of command. The service shall be characterized as follows:



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER, RESERVE AFFAIRS AND LOGISTICS)
WASHINGTON, D. C. 20350

21 MAR 1978

MEMORANDUM FOR THE DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY
PERSONNEL POLICY)

Subj: Administrative Discharge System

Ref: (a) DASD(MPP) memo of 1 Nov 1977

Reference (a) forwarded two issue papers concerning aspects of the administrative discharge system. This memorandum provides the Department of the Navy response on these issues.

Issue Number 1. Whether or not the "honorable discharge" for "honorable" service in the U. S. Armed Forces should be retained.

The Department of the Navy concurs with retaining the honorable discharge and with the concept of using degrees of "honorable" service to characterize a member's performance.

Issue Number 2. Whether or not the three-tiered administrative separation system should be retained.

The Department of the Navy concurs that the three-tiered system should be retained. The three-tiered system provides the necessary options to accurately reflect the quality of a member's service. Changes in the current means of characterizing discharges could cause public confusion and result in discrimination against former members who hold General Discharges. It is further believed that elimination of the General Discharge could result in a larger percentage of individuals receiving discharges under other than honorable conditions. In many instances, the General Discharge is a compromise in the discharge process which is an inherent part of the system. To deny the Services and the members the ability to "plea bargain" in appropriate instances would give the discharge system an inflexibility which would not be in the interests of the Government or the respondents.

The Navy recognizes that changes in the current administrative system are inevitable, and indeed, some change is desirable. However, any change made should be within the framework of the three-tiered system.

BERNARD ROSTKER
Principal Deputy for
Manpower & Reserve Affairs

DEPARTMENT OF THE AIR FORCE
WASHINGTON, D.C. 20330



OFFICE OF THE ASSISTANT SECRETARY

14 NOV 1977

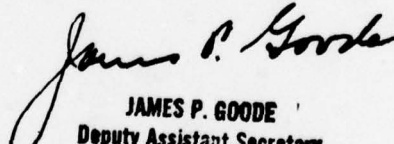
MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY (MILITARY PERSONNEL POLICY)
OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
(MANPOWER, RESERVE AFFAIRS AND LOGISTICS)

SUBJECT: Study of the Administrative Discharge System - INFORMATION
MEMORANDUM

The issues enclosed with your 1 November 1977 memorandum have been reviewed and the Air Force concurs with the proposals presented.

The "Honorable Discharge" has historically reflected the acceptance by the Military services of their responsibility to recognize and document military service which is honest and faithful. Accordingly, the definitional statement of "honorable service" is viewed as a constructive addition to DOD Directive 1332.14.

The three-tiered administrative separation system has served the Air Force well and we can find no substantive basis for change to a two-level configuration. Therefore, the Air Force reaffirms its support of the Departmental position in favor of the three-tiered system.


JAMES P. GOODE
Deputy Assistant Secretary
(Personnel Policy)

L7901980



MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS
(Military Personnel Policy)

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

NOV 21 1977

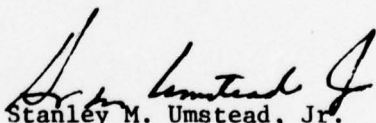
MEMORANDUM FOR Assistant Secretary of the Army (M&RA)
Assistant Secretary of the Navy (MRA&L)
Assistant Secretary of the Air Force (MRA&I)

SUBJECT: Study of Administrative Discharge System

Refs: ASD(MRA&L) Memo of 3 Sep 77 and DASD(MPP) Memo of 1 Nov 77
on the above subject

Attached for your review are two additional issue papers. The first deals with the discharge-in-absentia provision; the second with certain adjustments to DoD Directive 1332.14. Request your comment/concurrence on these issues by 2 December 1977.

As a related matter, this office is aware of certain studies recently completed or underway within the Military Departments which directly or indirectly relate to this subject (e.g., Navy study on voluntary out program and Army study on deserters). We would appreciate receiving copies of these for use in this study effort.


Stanley M. Umstead, Jr.
Major General, USAF
Deputy Assistant Secretary

cc: Dir, Jt Staff, OJCS

Attachments

Issue Number 3

Issue:

Whether or not the U.S. Armed Forces should discharge-in-absentia.

Background:

Department of Defense policy provides that a member may be discharged for misconduct when an unauthorized continuous absence of one year or more has been established. In accordance with this policy, a member beyond military control for more than one year may be discharged at Secretarial discretion provided prosecution is barred by the statute of limitations, or when such action would serve the National interests. However, in March 1969 the Subcommittee on Treatment of Deserters from the Military Service, Committee on the Armed Services, United States Senate, recommended that discharges-in-absentia be discontinued in the case of deserters and further, that such cases be processed in accordance with the Uniform Code of Military Justice (10 U.S. Code 801 et seq.). Since that time the discharge-in-absentia policy has not been generally applied. It has only been applied in those cases where the member is an alien who has gone to a foreign country where the U.S. has no authority to apprehend and in those cases where prosecution is barred by the statute of limitations. The GAO in their report dated January 31, 1977, on "Millions Being Spent to Apprehend Military Deserters, Most of Whom are Discharged as Unqualified for Retention," recommended reinstitution of the discharge-in-absentia provision with respect to long-term deserters. In its response to the GAO, the DoD stated in part:

"Discharge in absentia foregoes possible prosecution of other criminal offenses not discoverable until the deserter is returned to military control. Such a discharge would subvert the military justice mechanism by permitting the offender to avoid later trial. Discharge in absentia after the mere passage of time could also result in further inequities in punishment. For example, the individual who evaded past the 'in absentia' discharge point would receive an administrative discharge while those who returned earlier would face not only discharge, but other Uniform Code of Military Justice sanctions. Such discharge action, when the whereabouts of an individual is unknown, implies a lack of interest in the individual and could result in the issuance of an erroneous discharge. Return to military control also helps to determine the reason for desertion. Full implementation of the in absentia provision could undermine the concepts of military discipline and threaten mission accomplishment.

"Another aspect regarding the discharge in absentia provision causing considerable concern is insuring that not only have all reasonable efforts to return the individual to military control been explored, but also that due process requirements are accomplished. Critics of the current three-tiered administrative discharge system have repeatedly charged that the Military Services violate an individual's right to full due process when separation is effected under other than honorable conditions through the administrative discharge system, even when the military member is present and afforded a hearing. To discharge in absentia without further study does not seem appropriate."

The DoD further advised that the discharge in absentia provision would be reviewed in conjunction with our overall study of the administrative discharge system. The Appropriations Committees, during their review of the DoD Appropriation Bill for FY78, requested a copy of this study in connection with the submission of the FY79 budget.

Objective:

To achieve agreement/resolution on utilization of discharge-in-absentia policies.

Discussion:

It has historically been the desire of the U.S. Armed Forces to have absentees returned to military control as soon as possible. Upon their

return to military control, disciplinary action or administrative disposition of these absentees will be determined on an individual basis.

Each case is then reviewed on its own merits based on the facts and circumstances surrounding the absence. Fair and just punishment of absentees is often appropriate to the administration of military justice.

It is a fact that unauthorized absence is a violation of law which, dependent on the circumstances, carries a wide range of punishment options. Some people advocate a decriminalization of AWOL during an all-volunteer era and while we are at peace. If individual service members are permitted to depart from their units whenever they so choose, it may be extremely difficult for the military forces to effectively respond to an emergency. This potentially adverse effect on combat readiness, discipline, and morale in such circumstances could result in grave consequences to this Nation.

Comment:

The discharge-in-absentia policies have been periodically reviewed in the past with the intent to resume the exercise of issuing Other Than Honorable Discharges to members who have been on unauthorized absence in excess of one year. However, the conclusions reached by the Department of Defense during these past reviews was that military justice would best be served by continuing the policy in an inoperative posture.

Proposal:

Revise DoD Directive 1332.14 to specifically prohibit discharge-in-absentia except for aliens who leave the United States on prolonged unauthorized absence and those members who are barred by the statute of

limitations, 10 USC 843 (reference (e)) from prosecution. Enclosure 6,
paragraph E.5.a. would be changed to read as follows:

"(2) When the member who is an alien has gone to a foreign
country where the U.S. has no authority to apprehend such a
member under a treaty or agreement."

c. (delete present paragraph).

Issue Number 4

Issue:

Whether DoD Directive 1332.14 relating to enlisted administrative separations should be modified in order to force more administrative discharges into the punitive system under the UCMJ as a means of reducing or stemming attrition.

Background:

DoD Directive 1332.14 establishes the reasons for which an enlisted member may be administratively separated prior to the expiration of the member's enlistment and provides overall guidance for characterizing the period of military service. Many of the reasons for discharge are similar to conduct proscribed by the Uniform Code of Military Justice. Additionally, DoD Directive 1332.14 specifically permits discharge authorities, upon request of an accused, to grant a discharge for the good of the service to avoid/escape trial by court-martial. Because administrative discharge processing is usually easier and less expensive than disciplinary processing, commanders may be tempted to resort to or permit the use of administrative discharges in lieu of punitive action.

Objective:

To achieve agreement/resolution on the role of DoD Directive 1332.14 in the processing of cases which may also be processed under the UCMJ.

Discussion:

The administrative discharge system provides the armed forces with an expeditious means of separating, with an appropriate characterization of service, those members unable to adapt to service life and those who clearly

demonstrate they are unqualified for retention. At the same time, the Directive recognizes that the member has certain rights which must be protected. On the other hand, the Uniform Code of Military Justice is a comprehensive criminal code which regulates the conduct of members of the armed forces. The Code's primary goal is to ensure a high standard of morale and discipline which in turn promotes the efficiency of the fighting forces. Punitive sanctions under the Code include reduction in rank, imprisonment, punitive discharges and, in some cases, may even include a sentence of death. In many cases, a member's conduct, while technically criminal, is not deemed sufficiently grave to warrant punishment and the stigma associated with a trial by court-martial and a federal conviction. In such cases, while the member's conduct may render the member unsuitable for further military service, the commander may consider that an administrative discharge is more appropriate than trial by court-martial. For example, sodomy is a violation of Article 125 of the Uniform Code of Military Justice, but homosexual conduct, which includes sodomy, is also a reason for administrative processing for discharge under service regulations implementing DoD Directive 1332.14. However, absent aggravating circumstances, most cases of sodomy are processed administratively rather than punitively. Similar treatment is accorded members found to have used drugs.

In other cases, members who have engaged in criminal misconduct may be permitted to accept a discharge for the good of the service (usually under other than honorable conditions) in order to escape trial by court-martial. The discharge which they receive may be almost as stigmatizing as what the member could have received had he been tried by court-martial

and sentenced to a punitive discharge. However, the Government has avoided the expense of a trial and the accused has protected himself against a period of confinement and other penalties. In short, this device is a part of the plea bargaining process that goes on in connection with the American system of criminal justice.

Comment:

Over the past several years, the military justice system has become increasingly more complex as the result of rulings by the U.S. Court of Military Appeals. The rights and procedural safeguards afforded an accused often far exceed those to which his civilian counterpart is entitled. Contested trials in the military have long been expensive because of the Anglo-American right of confrontation of witnesses in criminal trials and the Code's worldwide subpoena power. Recent decisions regarding rights to counsel, speedy trial, and time constraints on post-trial actions have all placed additional burdens on the system. While a substantial number of commanders would prefer to court-martial and punish all who run afoul of the Uniform Code of Military Justice, limits on resources preclude such action. Should the mechanisms available to the commander under the administrative discharge system no longer be at the commander's disposal, an already overburdened military justice system would be strained to the breaking point. Not only is the military justice system expensive, it is also substantially more time-consuming than administrative separation procedures. Limitations on the expeditious separation of members under the DoD Directive would force commanders to retain nonproductive and frequently disruptive

individuals solely for the purpose of a court-martial, which may result in discharge, after a lengthy delay. Such members will often receive stigmatizing discharges as well as periods of confinement. Thus, while implementation of this administrative system by the Military Departments can and should be monitored to insure greater service and DoD wide equity in application and a lessening of inappropriate uses, any fundamental change which would force many administrative actions into the UCMJ would adversely affect many members and have little or no perceived benefit.

Proposal:

That no changes be made to DoD Directive 1332.14 at this time which would force more cases in the punitive system or restrict the commander's use of the administrative discharge as a viable alternative to punitive action in appropriate cases.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

5 May 1977



MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY PERSONNEL
POLICY)

SUBJECT: Study of the Administrative Discharge System

This replies to your request for the Army position on numbered issues three and four developed by the Interservice Working Group for Study of the Administrative Discharge System.

Issue 3: The Army concurs in the proposal to revise DOD Directive 1332.14 to specifically prohibit in-absentia discharge. A recent Army study on the apprehension of military deserters found that (1) in-absentia discharge could cost the Army over 10 million dollars more than the present cost of 53 million dollars, when adjusted to include losses from recruitment and training expenditures (2) under in-absentia discharge conditions, the Army desertion rate could increase from 8,416 in FY 77 to over 16,000 per year (3) an in-absentia discharge policy could adversely affect troop morale (4) a policy of this type would remove the measurable deterrent effect of the policy to apprehend deserters and (5) the policy would impinge on the professional judgment of the Army - we must spend some money in order to have a deterrent effect. With regard to the suggested rewording of DOD Directive 1332.14, the deletion of paragraph E.5.c. of Inclosure 6 is legally objectionable without a change to 10 USC 1163. However, this paragraph does not need to be deleted in order to accomplish the stated proposal.

Issue 4: The Army strongly endorses this proposal and is opposed to any changes which would eliminate or modify the existing provisions for administrative discharges by forcing them into the punitive system. If the current administrative mechanisms for discharge (expeditious discharge, discharge for misconduct, discharge for the good of the service) were no longer available to the commander except through UCMJ action, the military justice system would be stifled and commanders would be forced to retain these personnel for extended periods of time. Such retention would adversely affect unit readiness, discipline and morale.

The Army study on apprehension of military deserters will be provided to your office under separate cover.

Clayton H. Gornet
Clayton H. Gornet
Deputy for

Military Personnel Policy & Programs



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER, RESERVE AFFAIRS AND LOGISTICS)
WASHINGTON, D. C. 20360

8 FEB 1978

MEMORANDUM FOR THE DEPUTY ASSISTANT SECRETARY OF DEFENSE
(MILITARY PERSONNEL POLICY)

Subj: Study of Administrative Discharge System

Ref: (a) My memo of 18 Jan '78

Reference (a) forwarded the Department of the Navy recommended policy change to DoD Directive 1332.14. The Navy supports a change that would authorize issuance of an in absentia other than honorable discharge to a member absent for more than 180 days.

The Navy's position with respect to in absentia discharges is based on the following considerations:

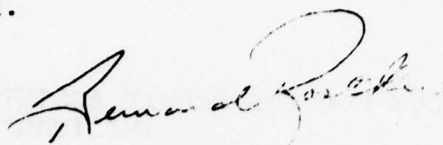
a. The policy would give Service personnel managers an additional option to use in dealing with a nonproductive manpower segment. Since the in absentia discharge would be an option -- not a mandatory procedure that must be used when service members have been absent for more than 180 days -- it would not be invoked where the member should be apprehended and returned for disciplinary action.

b. Such a policy would allow the military services to get nonproductive deserters-at-large off the books without further expenditure of money and official time. The fact that discharges are issued under other than honorable conditions -- and this is the most likely result after apprehension and disciplinary proceedings as well -- means that an in absentia discharge is not the easy way out of a service obligation.

c. The policy responds affirmatively to GAO Report B-146890 of 31 January 1977 while, at the same time, promoting a get tough policy with respect to the unsuccessful soldier who becomes a deserter.

d. The change is fully consistent with the Navy policy to make it clear that desertion is not an easy way out of the Navy. Dismissal under other than honorable conditions -- and

without further expenditure of scarce DoD and Justice Department resources -- is not a reward.



Bernard Rostker
Principal Deputy
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

18 JAN 1978

MEMORANDUM FOR THE DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY
PERSONNEL POLICY)

Subj: Study of Administrative Discharge System

Ref: (a) Your memo of 21 Nov 1977

Reference (a) forwarded Issues #3 and #4 concerning aspects of the administrative discharge system.

The Department of the Navy concurs with the conclusions reached in Issue #4 and therefore opposes any change which would force more separations into the punitive system. We also oppose any additional restrictions on the commander's use of the administrative discharge as an alternative to punitive action in appropriate cases. The Department does not, however, concur with Issue #3 which would prohibit discharge in absentia except for aliens who leave the United States on prolonged unauthorized absence, and for members whose prosecution is barred by the statute of limitations. The Department proposes that "discharge in absentia" with an other than honorable discharge be authorized for prolonged unauthorized absences of more than 180 days. TAB A is the proposed change to DOD Directive 1332.14.

The Department believes that members who absent themselves for more than 180 days have demonstrated a lack of potential to develop into productive members. Thus, the cost of apprehending and processing such members for judicial proceedings would not, in most cases, be commensurate with the value that retention might provide to the Department.

BERNARD ROSTKER
Principal Deputy
Assistant Secretary of the Navy
(Manpower & Reserve Affairs)

L80540

Proposed Change to DoD Directive 1332.14 (Encl 6)

E.5. A member beyond military control by reason of unauthorized absence:

- a. May be discharged under other than honorable conditions in absentia under either of the following circumstances:
 - (1) When the prosecution of the member is apparently barred by statute of limitations, 10 USC 843, (reference (e)). In those cases, a Discharge Under Other Than Honorable Conditions certificate may be issued at any time after it is determined that prosecution is so barred, provided that upon consideration of available extenuating, mitigating and aggravating factors in each case, the discharge authority determines that the best interest of the Armed Forces will be served by issuance of such discharge.
 - (2) When the discharge authority determines, in accordance with regulations of the Department concerned, that the member concerned has been on unauthorized absence for more than 180 days, unless the member is wanted by the Department for some specific purpose, such as another crime or security matter, or upon consideration of available extenuating, mitigating and aggravating factors in each case, the discharge authority determines that the best interest of the Armed Forces will be served if such discharge is not issued. Issuance of a Discharge Under Other Than Honorable Conditions certificate will serve the national interests.
 - (3) When the member who is an alien has gone to a foreign country where the U.S. has no authority to apprehend such a member under a treaty or agreement.
- b. Shall be notified of the imminent discharge action and the effective date thereof by registered mail or certified mail, return receipt requested, forwarded to the record address of the member, or next of kin, as appropriate.
- c. Shall be subject to the separation limitations of 10 USC 1163 (reference (f)), if he/she is a member of a Reserve component.

DEPARTMENT OF THE AIR FORCE
WASHINGTON 20330



OFFICE OF THE ASSISTANT SECRETARY

January 13, 1978

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY (MILITARY PERSONNEL
POLICY) OFFICE OF THE ASSISTANT SECRETARY
OF DEFENSE (MANPOWER, RESERVE AFFAIRS AND
LOGISTICS)

SUBJECT: Study of the Administrative Discharge System -
INFORMATION MEMORANDUM

The issues enclosed with your 21 November 1977 memorandum have been reviewed and the Air Force concurs with the proposals presented.

Due process considerations and relevant equities in the administration of military justice would be further confounded by general application of discharge in absentia. The potential for inducement of higher levels of absentees and the concomitant, potentially adverse effect on combat readiness, discipline and morale further support restricted application of this provision.

The Air Force does not support arbitrary modification of DOD Directive 1332.14 to force administrative discharges into the punitive system as a viable means of reducing attrition. Rather, current tools should remain available and existing Departmental Secretarial prerogatives maintained.

A handwritten signature in dark ink, appearing to read "Antonia Handler Chayer".

Antonia Handler Chayer
Assistant Secretary of the Air Force
(Manpower, Reserve Affairs
and Installations)



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D C 20301

MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS

(Military Personnel Policy)

8 FEB 1978

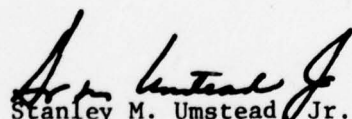
MEMORANDUM FOR Assistant Secretary of the Army (M&RA)
Assistant Secretary of the Navy (MRA&L)
Assistant Secretary of the Air Force (MRA&I)

SUBJECT: Study of Administrative Discharge System

Ref: ASD(MRA&L) memorandum of 3 Sep 77, subject as above

Attached is issue paper number 5 on the marginal performer/expeditious discharge program. This issue is especially pertinent for review at this time in light of the concern over the high cost of first-term attrition.

Please provide your concurrence/comments not later than 24 February 1978.


Stanley M. Umstead Jr.
Major General, USAF
Deputy Assistant Secretary

Attachment

cc: Dir, Jt Staff, OJCS

ISSUE NUMBER 5

Issue: Whether or not the marginal performer program (including the expeditious discharge program) is causing unnecessary attrition.

Background: An amended PDM directed the Services to reduce first-term attrition rates in order to reduce accession requirements. The Military Services use the marginal performer program in different manners based upon varying definitions of who is a marginal performer. This contributes to variances in program applicability and the resulting statistics reported by the Military Services. A comparison of the programs is attached (Tab A). During the period that the marginal performer program has been in operation (Tab B), the overall attrition rate attributed to this program has been substantial. However, these statistics indicate a downward trend.

Objective: To examine the provisions for discharging marginal performers and recommend corrections if required.

Discussion: The marginal performer program has served and continues to serve the purpose for which it was intended. It is a cost effective and expeditious means of separation of non-performers prior to those individuals becoming the subject of more severe administrative/disciplinary action. The marginal performer program and the entire administrative discharge system have been criticized as a result of a perception that the Services are taking the "easy way out" rather than exercising proper leadership and enforcing traditional disciplinary alternatives. Attrition levels have tended to elicit a conclusion that this perception is valid.

Comment: The marginal performer program is only one facet of the entire administrative separation process and, therefore, cannot be deemed responsible for the total first term attrition problem.

The marginal performer program is only a separation vehicle used by the Services and is not directly related to the root causes for attrition. Rather, causative factors such as today's social mores, liberal court system, perceived "right to quit" in an all volunteer force environment and the perceived lack of representation of personal and job related issues are some of the reasons for our increased attrition. Notwithstanding, these perceptions must be addressed, and where unnecessary attrition is occurring, corrective action must be taken.

This should include a positive emphasis on return to more traditional military values mixed with revitalization of retraining vis a vis elimination procedures, based on an equitable discipline system.

Proposal: Reaffirm the adequacy of DoD guidelines for the marginal performer program and individual Secretarial prerogative to manage losses under this program as a part of the respective Service overall effort to meet established attrition goals.

Comparison of Marginal Performer/Expeditions Discharge Programs

AIR FORCE	ARMY	NAVY	MARINE CORPS
<u>Marginal Performer</u> Pay grade E-3 or below Less than 36 months service Performance having been noncontributory to unit readiness and mission accomplishment as evidenced by below average marks or specific, demonstrated incapacity to meet performance standards Approval authority - Commander exercising SPCM authority Character of discharge - Honorable	<u>Trainee Discharge Program (TDP)</u> Operates during first 6 months service Designed to eliminate soldiers who are unable to meet established standards or adapt to Army Approval authority - Training Center Commanders Character - Honorable only <u>Expeditions Discharge Program (EDP)</u> Operates during 6th through 36th months service Allows discharge of individuals not contributing to performance of unit's mission Character of discharge - HON or GEN. Approval authority - Battalion level Commander	<u>Marginal Performer</u> Pay grade E-3 or below Less than 36 months service On board current command more than 60 days Marginal performer is one who: a. Fails to maintain required proficiency in rate b. Is administrative burden to command due to minor infraction c. Has performance which is noncontributory to unit readiness Approval authority - CO (SPCM authority) unless member objects; then forward to Bureau of Naval Personnel Character of discharge - HON or GEN based upon average of performance marks (except those issued in recruit training, which must be HON)	<u>Expeditions Discharge</u> Pay grade E-3 or below Between 6 and 36 months service Members who demonstrate that they cannot or will not meet acceptable standards, reflect inability to adapt to service requirements, or have failed to demonstrate promotion potential Approval authority - SPCM unless member objects; then GCM authority Character of discharge - HON or GEN based upon average of performance marks <u>Recruit Failures</u> Operates during recruit training Designed to eliminate recruits who are unable to meet established standards or adapt to the Marine Corps Approval authority - Recruit Depot Commander Character - Honorable only

MARGINAL PERFORMER/OTHER EXPEDITIOUS DISCHARGE PROGRAMS 1/

	FY 1974		FY 1975		FY 1976		FY 1977 <u>4/</u>	
	<u>Hon</u>	<u>Gen</u>	<u>Hon</u>	<u>Gen</u>	<u>Hon</u>	<u>Gen</u>	<u>Hon</u>	<u>Gen</u>
Army	15,673	2,140	26,838	7,482	28,346	14,595	23,373	10,944
Navy	0	1,804	0	2,302	0	1,764	239	1,377
Air Force ^{2/}	8,561	0	15,963	0	10,385	0	9,016	0
Marine Corps ^{3/}	0	0	0	0	378	2,266	360	1,667
Totals	24,234	3,944	42,801	9,784	39,109	18,625	32,988	13,988

Notes:

1. Because of varying definitions of who is a marginal performer/expeditious dischargee, there are statistical variations among the Services.
2. The AF figures for FY74 also include those separated prior to Mar 74 for failure to meet minimum retention standards, those discharged as being of limited potential or minimally productive.
3. The MC did not have an expeditious discharge program until 12 Nov 75.
4. Because of the change in fiscal year dates, the following data applies to the transition quarter (7T/1Jul-30Sep76):

	FY 197T	
	<u>Hon</u>	<u>Gen</u>
Army	8,489	3,541
Navy	35	399
AF	2,757	0
MC	189	1,853
Totals	11,470	4,793



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

28 FEB 1978

7 MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE (MILITARY PERSONNEL
POLICY)

SUBJECT: Study of the Administrative Discharge System

This replies to your memorandum of 8 February 1978 requesting comments/
concurrence on the marginal performer/expeditious discharge program.

The Army affirms that the marginal performer program is an integral and
necessary part of the administrative discharge system and continues to
serve the purpose for which it was intended. While attrition under the
program has been criticized by some, the positive results have been
substantial in terms of improved unit effectiveness, readiness, and
morale. The program does enable the soldier to avoid the stigma which
a later, possibly less-than-honorable discharge would place on him, and
demonstrates to others in training and in units that the Army does not
retard those who cannot perform or adapt.

The guidelines established in DOD Directive 1332.14 are adequate for the
Army's establishment and operation of the program. Army attrition is
reducing and the FY 78 DOD established attrition rates will be met.

The Army concurs with the issue paper's proposal which reaffirms the
adequacy of the DOD guidelines for the Marginal Performer Program and
individual Secretarial prerogative to manage losses under the Marginal
Performer Program.

Clayton J. Zopf
Clayton J. Zopf
Director
Military Personnel Policy & Programs



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER, RESERVE AFFAIRS AND LOGISTICS)
WASHINGTON, D. C. 20360

21 MAR 1978

MEMORANDUM FOR THE DEPUTY ASSISTANT SECRETARY OF
DEFENSE (MILITARY PERSONNEL POLICY)

Subj: Administrative Discharge System

Ref: (a) DASD(MPP) memo of 8 Feb 1978

Reference (a) forwarded an issue paper concerning the study of the administrative discharge system. This memorandum provides the Department of the Navy response.

Issue Number 5. Whether or not the marginal performer program (including the expeditious discharge program) is causing unnecessary attrition.

The Department of the Navy supports the proposal to continue the separation of marginal performers as set forth in reference (a).

Tab B to reference (a) shows information, by Service, concerning numbers of individuals discharged under marginal performer/other expeditious discharge programs. It should be noted that the Marine Corps did not implement procedures to discharge marginal performers prior to FY-1976. Prior to FY-1977 Navy did not administer the program in the same manner as the other Services. These factors cause the changes apparent in Tab B.

With the advent of full implementation of the marginal performer discharge procedures within the Department of the Navy the Services will have a means which is cost-effective and expeditious to separate individuals who are unable to perform in a minimally acceptable manner. Top level Secretarial and military attention is being paid to this program to insure that it does not cause unnecessary attrition in the Department but rather that it serves its intended purpose of separating those who would otherwise become nonproductive members and become the subjects of more severe administrative or disciplinary action.

A handwritten signature in cursive script, reading "Bernard Rostker".

BERNARD ROSTKER
Principal Deputy for
Manpower & Reserve Affairs

DEPARTMENT OF THE AIR FORCE
WASHINGTON, D.C. 20330



OFFICE OF THE ASSISTANT SECRETARY

March 15, 1978

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY (MILITARY PERSONNEL
POLICY) OFFICE OF THE ASSISTANT SECRETARY
OF DEFENSE (MANPOWER, RESERVE AFFAIRS AND
LOGISTICS)

SUBJECT: Study of the Administrative Discharge System -
INFORMATION MEMORANDUM

The issue enclosed with your February 8, 1978, memorandum has been reviewed. The following comments provide the Air Force position.

DOD guidelines are adequate for the establishment of a marginal performer discharge program. However, we find the guidelines lacking in certain specifics which result in significant differences in program application among the Services. Differences in program terminology, period of application and population affected create confusion in program reference and misleading statistical reporting. The Air Force is a strong advocate of this program and these variances only serve to aggravate perceived differences in the treatment of personnel among the Services. Accordingly, we recommend the application provisions of the DOD guidelines be changed to specify population, service period and program title to further standardize the program. Air Force program provisions are offered for consideration: (1) population - pay grade E-3 or below; (2) service period - apply to entire initial 36 month service period; (3) program title - marginal performer only.

The Air Force fully supports the proposal to maintain individual Service prerogative in the management of loss programs to meet attrition objectives.

A handwritten signature in cursive script, reading "Antonia H. Chaves".

Antonia Handler Chaves
Assistant Secretary of the Air Force
(Manpower, Reserve Affairs
and Installations)

CHAPTER 3

DATA ANALYSIS

I. TRENDS IN CHARACTERIZATION PRACTICES -- A COMPARISON AND ANALYSIS OF FYs 1972 AND 1977.

The Armed Forces have undergone many changes since the end of the Vietnam Conflict. In FY72, the United States still had troops in Southeast Asia, although their numbers were decreasing.^{1/} The draft was still in force. Military delinquency was much greater; for example, the Army's desertion rate stood at 60 per 1000 in FY72 compared to 16.7 per 1000 in FY77. Marginal performer discharge programs had not yet been introduced, and in many other ways,^{2/} the discharge system differed from its current operational status.

Nevertheless, one would suppose that if a specific reason for discharge were determined, e.g., personality disorder, the characterization of service assigned to an individual discharged should remain the same both within and among the Services. This hypothesis is tested in following analyses, using the separation files maintained by the DoD Manpower Data Center for all the Services for FYs 1972 and 1977.

Changes in the Types of Discharges Issued

Table 1 shows changes in the percentage of each type of discharge as issued by the four Services during FY72 and FY77.^{3&4/} Discharges for immediate reenlistment are not included.

1/ Troop strength in Vietnam declined from 239,200 to 47,000 in FY72.

2/ Detailed later in the report.

3/ Throughout this chapter, the word "discharge" is an abbreviation--for ease of reading--which includes the process of separation or release from active military status, as well as actions which accomplish a complete severance of all military status. It also includes the assignment of a reason for such discharge and characterization of service.

4/ The FY77 data includes data from the transition quarter, i.e., July-September 1976. It should also be noted that the data in this section does not contain discharges for immediate reenlistment.

TABLE 1

PERCENT (ROUNDED) OF TYPES OF DISCHARGE ISSUED BY SERVICE IN FY 72
and FY 77^{1/}

	ARMY		NAVY		MARINES		AIR FORCE		DOD	
	FY 72	FY 77	FY 72	FY 77	FY 72	FY 77	FY 72	FY 77	FY 72	FY 77
HONORABLE CONDITIONS										
HONORABLE	89.2	83.7	90.3	82.1	84.2	78.5	95.0	96.7	89.9	85.4
GENERAL	4.3	9.4	7.8	14.9	9.1	9.5	4.1	2.8	5.3	9.5
SUB TOTAL	93.5	92.1	98.1	97.0	93.4	88.0	99.2	99.4	95.2	94.9
ADVERSE CONDITIONS										
OTHER THAN										
HONORABLE	6.1	6.3	1.3	2.3	4.3	10.1	.7	.4	4.3	4.4
BAD CONDUCT	.3	1.5	.5	.6	2.2	1.8	.1	.2	.5	.6
DISHONORABLE	> .05	> .05	> .05	> .05	.1	.1	.0	> .05	> .05	.1
SUB TOTAL	6.5	7.8	1.9	2.9	6.6	12.0	.8	.6	4.8	5.1
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

^{1/} NOTE: FY 77 TOTAL INCLUDES FYT (JULY-SEPTEMBER 1976). DISCHARGES FOR IMMEDIATE REENLISTMENT ARE EXCLUDED FROM BOTH YEARS.

SOURCE: DOD MANPOWER DATA CENTER REPORT 3436

> = less than

< = greater than

Army discharges under honorable and adverse conditions were essentially the same. The principal difference during the two fiscal years was a decrease in honorable discharges (HDS) during FY77 and a corresponding increase in the percent of general discharges (GDS). This change can be traced to the differences in the specific reasons assigned in the category of "convenience of the government" reasons for discharge. During FY72 the Army assigned mostly HDS to satisfactory soldiers under the convenience of the Government category of reasons in order to reduce its size. During FY77, the Army was assigning mostly GDS to unsatisfactory soldiers under the convenience category of reasons because of their marginal performance.

The pattern of discharges for the Navy during the two years was essentially the same as for the Army: a decrease in HDS and an increase in GDS in FY77 as compared to FY72. An attempt to deal with marginal performers also appears to have been the reason for the increase in general discharges in the Navy. However, it should be noted that the Navy makes more extensive use of the "unsuitability" category of reasons for discharge and less of the marginal performer programs used by the Army (see Table 9).

The decrease in HDS from the Marine Corps between FY72 and FY77 corresponds to an increase in other-than-honorable (OTH) discharges, rather than GDS. The shifts can be traced to the interaction between two major factors: a decrease in the percent completing their terms of service and a decrease in the number being separated for drug abuse.

Failure to complete the term of service reduced the percent of HDS, since most persons who complete the tour are awarded HDS. Those who did not complete the term because of unsuitability or marginal performance were usually awarded GDS. But there was a decrease in drug abuse--a frequent reason for GDS. The net effect of the two factors was to reduce the percent of HDS and to hold the percent of GDS almost constant. Thus the reduction in HDS here increased the relative proportion of OTHS.

The Air Force actually increased the percent of HDS between FY72 and FY77. This shift may be due, in part, to the Air Force policy of granting HDS to all marginal performers.

Since over two-thirds of DoD discharges come from the Army and Navy, it is not surprising to see that the shift in DoD discharges over the period mirrors those of the Army and Navy.

Changes in Types of Discharge for Unsuitability

The three most frequent specific reasons for discharge from the Service under the unsuitable category of reasons are personality disorder, apathy, and inaptitude. Table 2 shows changes in the characterization of service of those discharged as unsuitable in FY72 and FY77.

TABLE 2

PERCENT (ROUNDED) TYPES OF DISCHARGE FOR UNSUITABILITY BETWEEN FY72 AND FY77

	ARMY		NAVY		MARINES		AIR FORCE		DOD	
	FY 72	FY 77	FY 72	FY 77	FY 72	FY 77	FY 72	FY 77	FY 72	FY 77
PERSONALITY DISORDER										
HONORABLE	13	43	75	81	51	81	65	90	47	80
GENERAL	87	57	25	19	49	19	34	10	53	20
APATHY										
HONORABLE	21	15	76	15	38	72	35	63	35	36
GENERAL	79	85	24	85	62	28	65	37	65	64
INAPTITUDE										
HONORABLE	40	32	41	100	89	88	85	NA	61	97
GENERAL	60	68	59	.5	11	12	15		39	3

Personality Disorders. The most frequent specific reason for discharge under the unsuitability category in both FY72 and FY77 was "personality disorder." Within DoD this reason accounted for 62% and 37% of the unsuitability discharges issued in these two years. During both years, the Army issued GDS to persons with personality disorders. However there was a noticeable shift within the Army towards characterizing this reason as deserving of an HD. Another change for the Army was a marked reduction in the use of this reason for discharge at all. In FY72, 2.1% of all discharges were for personality disorders. By FY77, the percent had dropped to one half of one percent.

In the other Services, most personnel discharged because of "personality disorder" in both years received HDS. In the Navy there was essentially no change in the percent receiving HDS. Both the Marine Corps and the Air Force had noticeable increases towards more HDS. Since all four Services were moving towards issuing higher percents of HDS for personality disorders, DoD also reflected a significant trend in this direction.

Apathy. In FY72, apathy was the second most frequent specific reason for discharge under the unsuitability category. In FY77, it was the third most frequent--behind financial irresponsibility. During these two years it accounted for 19 and 17% of unsuitability discharges, respectively.

Between FY72 and FY77, the Army remained fairly constant in the way it characterized discharges for this reason: most were issued general discharges. The other three Services all showed fairly marked shifts. The Marine Corps and Air Force shifted from giving mostly general discharges to giving mostly HDS. The Navy not only showed the largest shift over these years, but also shifted in the opposite direction. In FY72, 76% received HDS, in FY77 the figure was 15%.

The variation in magnitude and direction of shifts within the Services resulted in no shift for DoD as a whole: 35% of the dischargees for apathy in FY 72 received HDS. In FY77, the figure was 36%.

Inaptitude. The last major specific reason for discharge under the unsuitability category is inaptitude. In FY72, it was the third most frequent reason; in FY77, it was the fourth. Both the Army and the Marine Corps' characterization of those discharged for this reason remained relatively constant over the period. Most (60 to 68%) of those discharged for this reason in the Army were issued GDS. Most (88-89%) of those discharged for the same reason in the Marine Corps were issued HDS. In contrast, the Navy showed a rather dramatic change. In FY72, less than half (41%) were issued HDS compared to 100% in FY77. The Air Force virtually stopped using this reason in FY77. In FY72, this reason accounted for only .2% of the discharges; by FY77, it accounted for only .04%.

The change in the DoD figures reflected what happened in the Services. The two Services which made the most use of this reason--the Navy and Marine Corps--both changed towards issuing greater percentages of HDS. Thus DoD showed a similar change.

Changes in Types of Discharge for Misconduct

Table 3 shows changes in characterization of service upon discharge for the four most common specific reasons under the misconduct category: drug abuse, frequent involvement with military or civilian authorities, fraudulent enlistment, and civil court convictions.

TABLE 3

PERCENT (ROUNDED) OF TYPES OF DISCHARGE FOR MISCONDUCT REASONS - FY72 AND FY77

REASON FOR/TYPE OF DISCHARGE	ARMY		NAVY		MARINE CORPS		AIR FORCE		DOD	
	FY72	FY77	FY72	FY77	FY72	FY77	FY72	FY77	FY72	FY77
DRUG ABUSE										
HONORABLE	4	93	49	4	23	NA	33	49	32	29
GENERAL	81	3	50	93	69		62	49	62	68
OTHER THAN HONORABLE	14	4	1	3	8		5	2	6	3
FREQUENT INVOLVEMENT										
HONORABLE	2	4	3	2	3	5	16	15	4	4
GENERAL	17	29	96	96	45	29	56	77	40	77
OTHER THAN HONORABLE	81	67	1	2	52	65	28	8	56	19
FRAUDULENT ENLISTMENT										
HONORABLE	14	85	6	4	3	28	NA	NA	7	53
GENERAL	47	11	91	93	73	61			74	43
OTHER THAN HONORABLE	40	3	2	3	25	11			19	4
CIVIL COURT CONVICTION										
HONORABLE	4	6	11	2	2	4	15	23	6	8
GENERAL	14	27	71	68	19	14	61	53	28	37
OTHER THAN HONORABLE	81	67	18	29	80	81	24	24	66	55

Drug Abuse. The most frequent specific misconduct reason for discharge in FY72 was drug abuse (i.e., it accounted for 43% of all misconduct discharges). By FY77, it had become the fourth largest reason, accounting for 11% of misconduct discharges. The reduction in this reason for discharge is due to a change in the way the problem is handled rather than a reduction in drug abuse, per se. Starting in July 1971, the Services began to take a different view of those who voluntarily admitted that they had a problem for which they were seeking help from those who continued to use drugs or distributed them to others. Under a new separate category personal abuse of drugs individuals who volunteered for treatment were only eligible for HDS. Others continued to be discharged under the misconduct category for drug abuse with any one of the three administrative characterizations of service as warranted by their military record. In FY72, 10,971 individuals or 1.3% of all discharges were for drug abuse. In FY77, 6,380 individuals or 1.6% of all discharges were for drug abuse (1,871) or personal abuse of drugs (4,509).

Within the misconduct category for drug abuse, several Services showed marked changes in the percents of each type of discharge they issued. The largest change was in the Army. Eighty-one percent of FY72 discharges for drug abuse were characterized as general compared to 3% in FY77. Most (93%) Army discharges for drug abuse in FY77 were honorable. The next largest shift was made by the Navy. In FY72 the discharges were evenly split between honorable and general. By FY77, virtually all (93%) were general. The Air Force showed a

smaller shift but in the opposite direction from the Navy. It moved from mostly assigning GDS for drug abuse to an even split between honorable and general. The differences in direction taken by the Services resulted in essentially no change for DoD as a whole. In both years the typical discharge was a GD.

An alternative way of looking at these data is to combine the personal abuse of drugs and drug abuse reasons in FY77 and compare them with FY72 discharges for drug abuse only. It becomes clear that the Services have dramatically increased the percentage of HDS for drug abuse; from 32% in FY72 to 79% in FY77.

Frequent Involvement. With the decline in drug abuse discharges under the misconduct category in FY77, frequent involvement (with civilian or military authorities for relatively minor infractions) moved from the second most common specific reason--accounting for 27% of discharges under the misconduct category--to the most common specific reason for misconduct discharge. In FY77 it accounted for 45% of all misconduct discharges in DoD. Although each Service handled this type of misconduct consistently, there was a considerable disparity among the Services. The Army and the Marine Corps tended to issue OTH discharges for this reason while the Navy and Air Force tended to issue GDS.

From FY72 to FY77, the Navy was the most consistent. Virtually all (96%) frequent involvement discharges from the Navy were general. The least consistent Service was the Air Force. In FY72, 28% of those

discharged for frequent involvement were issued OTH discharges compared to 8% in FY77. The Army and Marine Corps showed smaller changes. Although both Services during both years issued mostly OTH discharges, the Army decreased the percent in FY77 while the Marine Corps increased it.

The increase in the percent of general, rather than OTH, discharges seen in the FY77 DoD figures is the result of the combined shift in the Army, Navy and Air Force. Thus, while over half (56%) of FY72 discharges were OTH, only 19% received OTH discharges in FY77.

Fraudulent Enlistment. Fraudulent enlistment has apparently not been a serious problem for the Air Force. Less than 100 persons were separated for this reason in either FY72 or FY77, therefore, Air Force separations were not analyzed. Although a relatively small problem for DoD in FY72, when it accounted for only 9% of misconduct discharges, it has increased in FY77 to account for 20% of these types of discharges.

Over this time period, both the Army and Marine Corps have moved towards issuing more favorable discharges. However, the Navy has remained constant. Shifts by the Army and Marine Corps--particularly the Army--are responsible for the corresponding shift in DoD as a whole towards a more favorable characterization of service for this reason. During FY72, the majority (74%) of fraudulent enlistment discharges were general. During FY77, the majority (53%) were issued HDS.

Civil Court Convictions. This specific reason for discharge under the misconduct category has remained relatively small: 9% and 12% of the FY72 and FY77 misconduct discharges, respectively. There was a noticeable shift in the characterization of this reason for discharge

away from honorable and toward OTH. However, the majority of Navy personnel separated in both years were issued general discharges. The other Services showed very small changes, as did DoD. The more interesting finding is that the Services characterize it differently. The majority of Army and Marine Corps discharges for this reason are OTH. The majority of Navy and Air Force discharges are GDS.

II. SERVICE IMPLEMENTATION OF DOD SEPARATION/DISCHARGE POLICIES: AN ANALYSIS OF FY 1977.

DoD Directive 1332.14 states that it is the duty of each Military Department to "appropriately characterize" the service rendered by those discharged through administrative channels. Although the directive clearly implies that the primary goal to be achieved is DoD-wide uniformity in application of reasons for separation and the characterization of service, it does not define what is appropriate. The notion of uniformity can be seen in the fact that the directive specifies what reasons are acceptable for discharging personnel. It can also be seen in the fact that most of the characterization or types of discharge which are to be given to each reason are either specified or restricted to one or two of the three administrative characterizations of service.

The purpose of this analysis is to test the degree of uniformity being achieved by the Services in the way they characterize reasons for separation in those cases where more than one characterization of service can be assigned. The analyses are restricted to those reasons for

separation which have resulted in at least 1000 separations/discharges within DoD during FY77.

Characterization of FY77 Service

Table 4 shows the characterization of service reflected in the separations/discharges issued by the four Services during FY77. The table shows that, although the vast majority of DoD personnel were assigned honorable characterizations of service upon discharge, there was considerable interservice variation in the percentage of members awarded each type of discharge. Eighty-three percent of separating Marines received HDS compared to 98% of separating Air Force personnel. The remaining four characterizations -- Under Honorable Conditions, Other Than Honorable, Bad Conduct (BCD) and Dishonorable (DD) -- also differed by Service. The Navy had the highest percent of GDS within DoD; the Army had the highest percent of OTH discharges. Among the punitive, which are given only as a result of court-martial, the Marine Corps had the highest percent. Punitive discharges are considered in this analysis only when necessary to present a complete statistical record.

Interservice variation on this dimension is an historical fact, and has continued in spite of adoption of a uniform discharge system in 1947.

Table 4

Number (in 000's) and Percent (both rounded) of Types of Discharge Issued by the Services During FY77

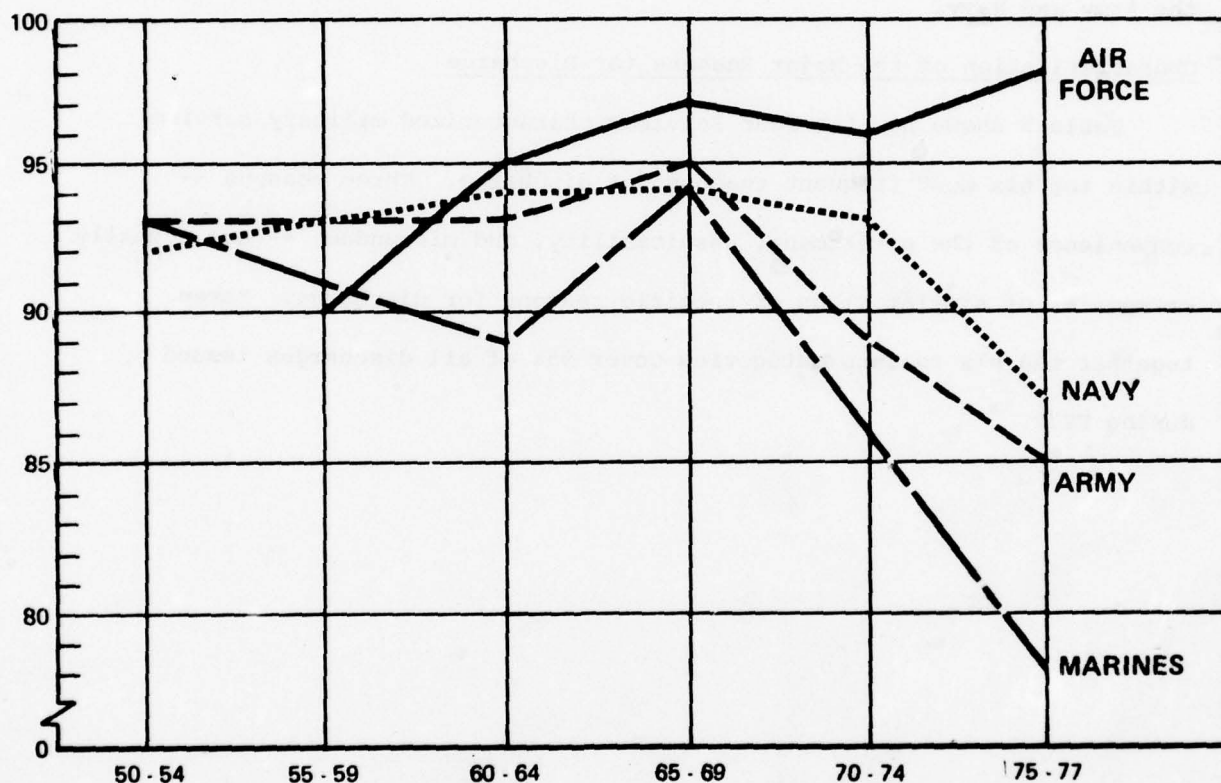
Type of Separation/Discharge	Service						DoD	
	Army		Navy		Marine Corps		Air Force	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<u>Under Honorable Conditions:</u>								
Honorable	209	88.3%	119	85.9%	46	82.7%	136	98.0%
General	16	6.8	16	11.8	4	7.7	2	1.7
Sub-Total	225	95.1	135	97.7	50	90.4	138	99.7
							549	89.5%
								6.8
								96.3
<u>Adverse Conditions</u>								
Other Than Honorable	11	4.5	3	1.8	4	8.1	0	.3
Bad Conduct	1	.3	1	.5	1	1.5	0	.1
Dishonorable	0	.1	0	>.05	0	>.1	0	>.05
Sub-Total	12	4.9	4	2.3	5	9.6	1	.4
							20	3.7
TOTAL	236	100.0	139	100.0	56	100.0	139	100.0
							569	100.0

Footnote: All data in this portion of the report came from DoD Manpower Data Center Report No. 3436: Discharge/Separation of Enlisted Members by Character of Service and Reason for Separation and includes the transition quarter (1 Jul - 30 Sep 76).

Figure 1 below shows the percent of HDS issued by each of the Services from FY50 to the present. (To increase the ability to detect long range trends, data points consisting of 5 year averages are used.)

Figure 1

PERCENT OF HONORABLE DISCHARGES BY SERVICE FY50 - FY77 ^{1/}



Fiscal Year	Army	Navy	Marine Corps	Air Force
50-54	93	92	93	-
55-59	93	93	91	90
60-64	93	94	89	95
65-69	95	94	94	97
70-74	89	93	86	96
75-77 (also 7T)	85	87	78	98

^{1/} Percent of HDS for Air Force not available prior to FY55.

The Services have not been uniform in the percentage of HDS issued during the last 27 years. Throughout most of this period, the Air Force has given a greater, and the Marine Corps a lesser, percent of HDS to members than have the other two Services. The second and third places among the Services in the issuance of HDS has been alternately held by the Army and Navy.

Characterization of the Major Reasons for Discharge

Table 5 shows how the four Services characterized military service within the six most frequent reasons for discharge. Three reasons -- convenience of the government, unsuitability, and misconduct -- are actually categories of similar kinds of specific reasons for discharge. Taken together the six reasons/categories cover 95% of all discharges issued during FY77.

Table 5

Characterization of Service For Major Categories of Discharge in FY77 (Percent - rounded)

Reason for/ Type of Discharge	Army		Navy		Marine Corps		Air Force		DoD	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<u>Convenience of the Government</u>										
Honorable	126,614	92	43,379	96	15,862	89	91,269	100	277,124	95
General	10,814	8	1,865	4	1,868	11	81	0	14,628	5
	<u>137,428</u>	<u>100</u>	<u>45,244</u>	<u>100</u>	<u>17,730</u>	<u>100</u>	<u>91,350</u>	<u>100</u>	<u>291,752</u>	<u>100</u>
<u>Completion of Enlistment</u>										
Honorable	57,523	100	45,692	99	20,242	99	19,871	100	143,328	100
General	164	>.5	285	1	239	1	23	>.5	711	>.5
	<u>57,687</u>	<u>100</u>	<u>45,977</u>	<u>100</u>	<u>20,481</u>	<u>100</u>	<u>19,894</u>	<u>100</u>	<u>144,039</u>	<u>100</u>
<u>Retirement</u>										
Honorable	9,542	100	11,747	100	2,267	100	17,752	100	41,308	100
General	0	0	0	0	0	0	0	0	0	0
	<u>9,542</u>	<u>100</u>	<u>11,747</u>	<u>100</u>	<u>2,267</u>	<u>100</u>	<u>17,752</u>	<u>100</u>	<u>41,308</u>	<u>100</u>
<u>Unsuitable</u>										
Honorable	1,164	24	12,817	68	3,679	78	3,227	73	20,887	64
General	3,647	76	6,017	32	1,064	22	1,171	27	11,899	36
	<u>4,811</u>	<u>100</u>	<u>18,834</u>	<u>100</u>	<u>4,743</u>	<u>100</u>	<u>4,398</u>	<u>100</u>	<u>32,786</u>	<u>100</u>
<u>Misconduct</u>										
Honorable	2,186	42	458	5	210	11	446	29	3,300	19
General	1,197	23	7,730	90	582	32	961	61	10,470	61
Other Than Honorable	1,778	35	374	4	1,038	57	158	10	3,348	20
	<u>5,161</u>	<u>100</u>	<u>8,562</u>	<u>100</u>	<u>1,830</u>	<u>100</u>	<u>1,565</u>	<u>100</u>	<u>17,118</u>	<u>100</u>
<u>Discharge in Lieu of Court-Martial</u>										
Honorable	28	>.5	9	>.5	67	2	16	5	120	1
General	134	1	81	4	119	3	89	29	423	3
Other Than Honorable	8,935	98	2,170	96	3,448	95	201	66	14,754	96
	<u>9,097</u>	<u>100</u>	<u>2,260</u>	<u>100</u>	<u>3,634</u>	<u>100</u>	<u>306</u>	<u>100</u>	<u>15,297</u>	<u>100</u>

Convenience of the Government

The DoD directive specifies that all the reasons covered within this board category of reasons for discharge must result in either HDS or GDS. Characterization within this group is somewhat related to Service. HDS, for example, varied from 90% for the Marine Corps to 100% for the Air Force. The reasons for the variations become clearer when specific reasons within the group (e.g., marginal performer programs and separations for pregnancy) are analyzed separately (see Table 6).

Completion of Enlistment

Interservice differences in the characterization of service for those who successfully complete their tours is negligible. More than 98% of all Service members separating for this reason were issued HDS.

Retirement

There were no Service differences in the handling of retirements -- all retirees received HDS.

Unsuitability

Within the board category of reasons known as unsuitability, there was a substantial degree of interservice difference (see Table 7 for details). The Army tended to separate such persons with HDS, the other Services with GDS. However, there were also fairly large differences in the percents of HDS given by the other Services. Seventy-eight percent of the Marines considered unsuitable were issued HDS as contrasted with 68% of those separated from the Navy.

Misconduct

There was an even greater disparity among the Services in how they characterized discharges within the misconduct category of reasons. The Army tended to issue more HDS; the Marine Corps tended to issue more OTH

discharge. The Navy and Air Force tended to issued GDS. Again, the reasons for these variations become clearer in more detailed analyses (see Table 7).

Discharge in Lieu of Court-Martial

The majority of persons discharged in lieu of court-martial received OTHs, but the percent again varied by Service. In the Army, 98% received OTHs; in the Air Force, 66% received OTHs.

Analysis of Specific Convenience Reasons

Table 6 contains an analysis of the five most frequent convenience reasons. Taken together, these constitute 75% of all convenience reasons.

Table 6

Differences in Characterization of Discharges Issued in FY 77 by
the Services for Selected Convenience of the Government Reasons
(Percent Rounded)

Reason For/Type of Discharge	Army		Navy		Marine Corps		Air Force		DOD	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<u>Immediate Re-enlistment</u>										
Honorable	66,057	100%	29,505	100%	10,945	100%	54,755	100%	161,262	100%
General	0	0	13	>.5	2	0	0	0	15	>.5
	<u>66,057</u>	<u>100%</u>	<u>29,518</u>	<u>100%</u>	<u>10,947</u>	<u>100%</u>	<u>54,755</u>	<u>100%</u>	<u>161,277</u>	<u>100%</u>
<u>Other</u>										
Honorable	35,558	100%	11,649	97%	4,153	95%	20,708	100%	72,068	99%
General	90	>.5	409	3	203	5	48	>.5	750	1
	<u>35,648</u>	<u>100%</u>	<u>12,058</u>	<u>100%</u>	<u>4,356</u>	<u>100%</u>	<u>20,756</u>	<u>100%</u>	<u>72,818</u>	<u>100%</u>
<u>Marginal Performer</u>										
Honorable	22,820	68%	240	15%	498	23%	8,959	100%	32,517	70%
General	10,686	32	1,377	85	1,652	77	21	0	13,735	30
	<u>33,506</u>	<u>100%</u>	<u>1,617</u>	<u>100%</u>	<u>2,150</u>	<u>100%</u>	<u>8,980</u>	<u>100%</u>	<u>46,252</u>	<u>100%</u>
<u>Reduction in Force</u>										
Honorable	1	N.A.	706	94%	0	N.A.	5,801	100%	6,507	99%
General	2		48	6	0		11	0	59	1
	<u>3</u>		<u>754</u>	<u>100%</u>	<u>0</u>		<u>5,812</u>	<u>100%</u>	<u>6,566</u>	<u>100%</u>
<u>Pregnancy</u>										
Honorable	1,615	98%	1,183	99%	247	96%	973	100%	4,018	99%
General	27	2	13	1	9	4	0	0	49	1
	<u>1,642</u>	<u>100%</u>	<u>1,196</u>	<u>100%</u>	<u>256</u>	<u>100%</u>	<u>973</u>	<u>100%</u>	<u>4,067</u>	<u>100%</u>

Immediate Reenlistment

Virtually all those separated for immediate reenlistment were given HDS. In fact, the GDS issued -- 13 out of 161,000 -- are probably accounted for by recording errors.

"Other" Convenience Reasons

This category is rather large. Included are such specific reasons as (1) insufficient time remaining in the contract to allow for reassignment, (2) entry into officer candidate school, (3) erroneous enlistment, (4) non-disabling medical conditions, and (5) those specified by the Services. The most frequent of these is the first, accounting for over 58% of this grouping of reasons. The relationship between Service and type of discharge for "Other" is low.

Marginal Performer

During FY77 all four Services had programs for expeditiously discharging personnel who were performing in a substandard manner during their first 36 months of service. All of the Services except the Army also specified that the individual be in pay grade E-3 or below. All the Services separated those still in basic training with an HD. The Army extended HDs to all persons separated under its marginal program within the first 6 months of enlistment; the Air Force extended HDs to all those separated. Given these differences in how the programs were administered, it was predictable that differences in the percent of HDs issued would exist. The percentages of HDs issued by the Services were: Army - 68%; Navy - 15%; Marine Corps - 23%; and Air Force - 100%.

Reduction in Force

Only two of the four Services discharged personnel because of surpluses. The Navy issued more GDS than did the Air Force (6 vs. 1%, respectively).

Pregnancy

The Air Force issued only HDs for pregnancy. The other Services issued some GDs as well. However, the differences among the Services in the percent of HDs were rather small.

Analysis of Specific Reasons for Unsuitability

Table 7 presents analysis of the four most frequently used reasons for separation under the unsuitability category. These four -- personality disorder, apathy, inaptitude, and other -- account for 95% of the discharge for unsuitability.

Table 7

Differences Between Types of Discharges Issued by the Services in FY 77 for Selected Reasons of Unsuitability

Reason for/Type of Discharge	Army		Navy		Marine Corps		Air Force		DOD	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<u>Personality Disorders</u>										
Honorable	330	43%	6,379	81%	1,859	81%	1,059	90%	9,627	80%
General	432	57	1,502	19	426	19	117	10	2,477	20
	762	100%	7,881	100%	2,285	100%	1,176	100%	12,104	100%
<u>Apathy</u>										
Honorable	412	15%	649	15%	1,410	72%	1,672	63%	4,143	36%
General	2,313	85	3,614	85	539	28	984	37	7,450	64
	2,725	100%	4,263	100%	1,949	100%	2,656	100%	11,593	100%
<u>Inaptitude</u>										
Honorable	39	32%	5,156	100%	332	88%	28	88%	5,555	97%
General	84	68	25	7.5	45	12	4	12	158	3
	123	100%	5,181	100%	377	100%	32	100%	5,713	100%
<u>Other</u>										
Honorable	1	7.5	336	31%	0	NA	8	NA	345	19%
General	729	100	731	69	1	1	1	1	1,462	81
	730	100%	1,067	100%	1	1	9		1,807	100%

Personality Disorder

There is a noticeable difference in characterization of service assigned by the Services for this reason. The Army issued GDS to 57% of those discharged. The Navy and Marine Corps issued GDS to 19% and the Air Force to 10%. The Services also differ in how often they use this reason for discharge. Over 4% of Navy and Marine Corps personnel, but less than 1% of the Army and Air Force, are discharged for this reason. The reasons for these differences are unclear.

Apathy

The degree of interservice difference in characterization is even greater for apathy than for personality disorder. Two Services -- the Army and Navy -- issued mostly GDS and two Services -- the Marine Corps and Air Force -- issued mostly HDS.

Inaptitude

Not only did the Services differ in the way they characterized service for inaptitude, but they again differed in the degree to which this reason was used. Most Army members discharged for inaptitude were issued GDS. Most members discharged from the other Services were issued HDS. In fact, the relationship between Service and type of discharge for inaptitude was one of the strongest relationships noted in these analyses. The Services also differed in their use of this reason. This reason was given for 4% of the Navy's discharges but accounted for less than 1% of the other Services' discharges.

Analysis of Specific Reasons for Misconduct Discharges

Table 8 shows the degree of consistency in characterization of service for the four most frequently used reasons under the misconduct category.

Table 8

Differences Between Types of Discharges Issued by the Services in

FY 77 for Selected Reasons of Misconduct (Percent-rounded)

Reason For/Type of Discharge	ARMY		NAVY		MARINE CORPS		AIR FORCE		DOD	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
<u>Frequent Involvement</u>										
Honorable	61	4%	126	2%	30	5%	85	15%	303	4%
General	395	29	5,005	96	173	30	449	77	6,022	77
Other Than Honorable	916	67	104	2	383	65	49	8	1,452	19
	<u>1,372</u>	<u>100%</u>	<u>5,235</u>	<u>100%</u>	<u>586</u>	<u>100%</u>	<u>583</u>	<u>100%</u>	<u>7,777</u>	<u>100%</u>
<u>Fraudulent Enlistment</u>										
Honorable	1,595	85%	39	4%	126	28%	20	26%	1,780	53%
General	214	12	904	93	275	61	47	60	1,440	43
Other Than Honorable	58	3	28	3	52	11	11	14	149	4
	<u>1,867</u>	<u>100%</u>	<u>971</u>	<u>100%</u>	<u>453</u>	<u>100%</u>	<u>78</u>	<u>100%</u>	<u>3,369</u>	<u>100%</u>
<u>Civil Court Conviction</u>										
Honorable	45	6%	10	2%	24	5	82	23%	161	8%
General	192	27	295	68	76	14	187	53	750	37
Other Than Honorable	484	67	127	29	435	81	85	24	1,131	55
	<u>721</u>	<u>100%</u>	<u>432</u>	<u>99%</u>	<u>535</u>	<u>100%</u>	<u>354</u>	<u>100%</u>	<u>2,042</u>	<u>100%</u>
<u>Drug Abuse</u>										
Honorable	265	93%	46	4%	15	25%	220	49%	546	29%
General	9	3	1,003	93	32	53	220	49	1,264	68
Other Than Honorable	10	4	31	3	13	22	7	2	61	3
	<u>284</u>	<u>100%</u>	<u>1,080</u>	<u>100%</u>	<u>60</u>	<u>100%</u>	<u>447</u>	<u>100%</u>	<u>1,871</u>	<u>100%</u>

Frequent Involvement

Frequent involvement is the reason given for discharging Service members because of multiple civilian or military offenses. The character of service assigned upon discharge is highly related to Service. Army and Marine Corps discharges are quite likely to receive OTH; Navy and Air Force discharges are quite likely to receive GDS. The difference in the way the Services characterize this reason for discharge has a significant impact upon the misconduct category since this reason alone accounts for 45% of such discharges.

Fraudulent Enlistment

The characterization of fraudulent enlistment is also highly related to Service. Approximately 60% of the Marine Corps and Air Force discharges for this reason were issued GDS. In contrast, most Army discharges were issued HDS, while most Navy discharges received GDS.

Civil Court Conviction

Any servicemember who is convicted in civil court of a crime for which the sentence could be one or more years in jail can be discharged from Service even if the sentence is not carried out. As can be seen in Table 8, the characterization of service associated with that reason varies widely across the Services. Most Army and Marine Corps discharges for civil court conviction result in OTHs; most Navy and Air Force discharges for the same reason result in GDS.

Drug Abuse

The Services also differed widely in how they characterized discharges for drug abuse. Ninety-three percent of Army discharges for this reason were HDS. The other Services assigned HDS to less than half. The most

frequently issued discharge in the Navy and the Air Force was a GD.
In the Marine Corps, an equal percent (49%) were issued HDS and GDS.

Analysis of Service Discharge Experience

There is a wide disparity in the way the Services discharge their personnel. Possible explanations for these variances are that they experience different rates of "trouble" and handle it differently. Both of these explanations are tested in the analyses below.

Table 9

Comparison of Adverse with Non-adverse Reasons for Discharge

Reason for/ Type of Dis- charge	Army		Navy		Marine Corps		Air Force		DOD	
	Number	%	Number	%	Number	%	Number	%	Number	%
<u>Part A</u>										
<u>Number and Percent Non-adverse and Adverse Reasons</u>										
Adverse	53,478	23%	31,928	23%	13,239	24%	15,377	11%	114,022	20%
Non-Adverse	182,917	77	106,514	77	42,316	76	123,622	89	455,236	80
Total	236,395	100	138,442	100	55,565	100	138,999	100	569,258	100
<u>Part B</u>										
<u>Number and Percent of Adverse Reasons</u>										
Marginal Per- former	33,506	63	1,617	5	2,149	16	8,980	58	46,252	41
Unsuitable	4,811	9	18,834	59	4,743	36	4,398	29	32,786	29
Misconduct	5,161	10	8,562	27	1,830	14	1,565	10	17,118	15
In lieu of court-martial	9,097	17	2,260	7	3,634	27	306	2	15,297	13
Court-martial	903	2	655	2	883	7	128	1	2,569	2
Total	53,478	100%	31,928	100%	13,239	100%	15,377	100%	114,022	100%

Part A of the table shows the percent of all discharges during FY 77 which may somehow be considered adverse (i.e., marginal performance, unsuitability, misconduct, in lieu of court-martial and court-martial) where the personnel involved fail to meet the established standards of performance or conduct. Eleven percent of Air Force discharges were for adverse reasons contrasted with 23 to 24% for the other Services.

Part B shows a distribution of the adverse categories of reasons assigned by the Services to those individuals who failed to meet established standards of performance or conduct. Both the Army and the Air Force made extensive use of the marginal performer program: 63% of the Army and 58% of the Air Force discharges among the problem group were processed in this manner. However, the Navy reported only 5% and the Marine Corps 16% for this reason. The most frequent reason for adverse discharge in the Navy (59%) and Marine Corps (36%) was unsuitability.

III. SERVICE IMPLEMENTATION OF MARGINAL PERFORMER PROGRAMS: DESCRIPTION

Congressional hearings on the FY74 budget for DoD resulted in the suggestion that the services introduce expeditious discharge procedures for the elimination of enlisted members considered to be marginal performers. In response to this suggestion, the Army, Navy and Air Force implemented such programs in FY74. The Marine Corps began its program in November of 1975. The purpose of this part is to review what is known about how these programs function within the Services.

The Air Force Program

The Air Force's forerunner (March 1974) to the DoD-wide program was called Limited Potential/Minimally Productive (LPMP) Discharge Program. The aims of this program were to expeditiously eliminate poor performers and those headed for trouble in order to improve the quality and productivity of the Air Force. Eligibility for discharge was restricted to airmen in their first enlistment, in pay grades E-3 and below who had completed between 6 and 36 months of service. Base commanders had the authority to discharge individuals under the program upon the recommendation of unit commanders.

Evaluation. In April 1975 the USAF Military Personnel Center completed an internal evaluation of the LPMP program that had been conducted to determine the "root causes" of LPMP discharges and to examine the possibility of its misuse. These questions were examined from the view points of unit leaders, individuals being discharged and based on the records of those being discharged. These evaluations varied.

The most frequent reasons for separating these members as given by commanders and supervising noncommissioned officers were: (1) inability or unwillingness to adjust to the Air Force, (2) defective attitude, (3) lack of motivation, and (4) failure to meet Air Force standards. Reasons for discharge found in the member's records told a different story. The number one reason found in the records was disciplinary infractions: letters of reprimand or article 15's were present in 144 of the 184 cases examined. The second most frequent reason was involvement with drugs or alcohol. The third was a record of emotional or attitudinal problems. The fourth reason was some problem associated with on-the-job training.

While the supervisors and records pointed to a lack of adjustment and disciplinary infractions, the enlisted personnel being separated saw the causes as job dissatisfaction or problems with supervisors. These two reasons were given by 53 and 39% of those separated, respectively. Less frequently mentioned reasons included regimentation, hassle, and family problems. Although prominently mentioned, the role of supervisory problems in the discharge process is unclear. Interestingly, those being separated and those not being separated rated their supervisors similarly. Apparently job dissatisfaction is the primary underlying reason leading to LPMP discharges.

Commanders and NCOs in this study did not feel the program was being abused. Most (85%) felt that it was an "effective management tool." They also felt that the provisions of the program were operating properly and

that it helped unit productivity. Four fifths of the commanders and 59% of the NCOs felt that those being separated would eventually become candidates for discharge for unsuitability reasons were they not separated under LPMP. Thus, the program appeared to be separating the kinds of persons it was intended to serve. However, it should be noted that the number of discharges in FY74 was 5 times the number Congress had envisioned when the program was proposed. It should also be noted that the Air Force has only issued Honorable Discharges under this program, whereas the other Services have issued a substantial number of General Discharges.

Finally it should be noted that the evaluations reported in the USAF MPC study can only be considered preliminary, as the program was in its infancy when the study was conducted.

Since the Air Force LPMP program already incorporated most of the features of the marginal performer program outlined in DoD directive 1332.14, the major change was a deemphasis on judgement about an individual's future promotability and an increase in emphasis upon the member's current behavior. Further details can be found in Air Force Regulation 39-10 (3 January 1977).

Army Program

Separation of marginal performers in the Army is carried out under two separate programs: the Trainee Discharge Program (TDP) and the Expeditious Discharge Program (EDP). Since these programs differ somewhat, they are discussed separately.

TDP. This program applies to soldiers in their first 179 days of service. Its aim is to expeditiously separate those who cannot or will

not meet established standards or who are unable to adapt to Army life. Specific reasons for early identification subsumed under TDP include: lack of aptitude, ability, motivation or self-discipline; or demonstration of behavioral characteristics incompatible with satisfactory continued service. Soldiers can also be separated under this program for minor forms of drug use or pregnancy prior to completion of training.

The recommendation for discharge comes both from company commanders and NCOs. However, only installation commanders can approve such requests. Although some TDP discharges are involuntary, all are characterized as Honorable.

Evaluation of TDP. Two of the most easily proven benefits of the program are speed and ease of processing discharges. For example, in 1975 it required 9 days to process a discharge under TDP as compared to 45-55 days resulting from board action. Other benefits attributed to the program include decrease in AWOL, desertion and barracks larcenies. The smaller amount of time spent by leaders in dealing with and discharging problem soldiers is believed to improve unit readiness and to increase unit morale. Unit morale is also believed to increase because the other soldiers in a unit can see that the Army is not a haven for low achievers. TDP is also of some benefit to discharges since they can leave service without the stigma of less than honorable discharges. In addition, the administrative procedures are much less complex.

Statistics kept at one Army post (Ft Bliss) reflect that since introduction of TDP, there has been a simultaneous decrease in rates of AWOL, desertion, and barracks larcenies. In US Army units in Europe, there was also a dramatic drop in both AWOL and desertion rates in

the fourth quarter of calendar year 1973 (right after the introduction of TDP and an experimental version of EDP). In the absence of other explanations, these statistics seem to suggest that TDP (and possibly EDP) have a beneficial effect on disciplinary rates.

The Army Research Institute (ARI) conducted three research projects which described differences in the kinds of persons separated under TDP and those retained in service. The first investigation (ARI, 1975) contrasted the personal characteristics and attitudes of 312 trainees separated under TDP with 2880 others who were not separated. The following small differences between the group emerged. TDP discharges tended to be: less educated and unemployed at the time of entry plus entered service because of "pushes" from the civilian sector rather than "pulls" from the Army. For example, the TDP group had a greater tendency to expect Army life to be boring and hard to adjust to. They also expected to have more trouble taking orders, doing things the "Army way", and getting along with others.

Bauer, et al. (1975) also looked at the characteristics of those being separated as compared to their peers. However, the sample contained a large number of reserve enlistees different from the Regular Army (RA) trainees, which made the results difficult to generalize. Reanalysis of the Bauer data by Orend, et al. (1977) showed that many identified characteristics of the soldiers were associated with being in the reserves rather than being marginal performers. However, difficulty in doing schoolwork was a factor that differentiated both RA and enlisted reserves from those who remained in service.

Bauer also described the operations of the program and the role of the training cadre through examination of what had occurred in the cases of 238 individuals who had been separated under TDP. The reason for separation given by the cadre for 64.5% of the group was the inability to adjust psychologically to the demands of military life. The manifestations of this inability included: "...continual unwillingness to accept instruction, complaints of being nervous and spending sleepless nights, frequent outbursts and sobbing, a reluctance to persevere and strive to complete difficult training tasks, and verbal threats to go AWOL if not discharged. However, the reason most commonly given for discharging trainees was the trainee's repeated request for an early discharge." (p. 3-14)

Expressed desire to be discharged was the primary reason for discharge in 44.3% of the cases and a contributing factor in 19.5%. However, it is difficult to generalize these findings to the program as a whole, since nearly half (44%) were reservists. Bauer found that the majority of individuals being separated under TDP seemed to fit the requirements of the program. Those who did not were performing satisfactorily, but had problems with their wives, fiancées, girlfriends or parents, which made it difficult for them to remain in the Army. Family and other relationship problems are not listed as acceptable reasons for discharge under TDP. Other cases seemed more appropriately separated through medical channels. The relative ease of separation under TDP, when compared to other types of administrative discharge made it difficult to resist exercising discretion in borderline cases that might not qualify otherwise for TDP processing.

Another factor Bauer found which contributed to the possible "misuse" of TDP, was the way the regulation was written. Not only were the criteria somewhat vague, but they were actually contradictory. For example, the training cadre often had difficulty evaluating such criteria as attitude, aptitude, and "quitter." Such differentiations are necessary before deciding whether or not an individual should be separated under TDP. Poor attitude is grounds for TDP separation, but an established pattern of shirking is not. Members can be separated under TDP for low aptitude or capacity to learn and physical unfitness, but not for "physical or mental defects."

The Bauer report lead to efforts to clarify possible misinterpretations of how the TDP was supposed to function. It is not a voluntary release program, but rather a means of quality control. Also, it is to be a last resort after all efforts to rehabilitate soldiers have failed. These points were stressed in both the revision of regulations and on a special videotape program on TDP prepared for drill sergeants and appropriate level commanders. Army program managers for TDP indicate implementation of these findings has resulted in significant program improvements.

EDP. This program is a logical extension of the TDP. It provides field commanders of soldiers, having between 6 and 36 months of service, the ability to expeditiously discharge those who are not contributing to the performance of the unit's mission. Specific reasons for discharge include: poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally, and failure to demonstrate

promotion potential. Eligibility is further restricted to those who have been in their current unit of assignment for at least 60 days. The program cannot be used for: persons who have the potential for rehabilitation, refuse to accept discharge under this policy, or are more appropriately discharged under some other provision (e.g., unsuitability, misconduct, or court-martial).

As in the TDP, recommendations for discharge come from the company level and the approval authority rests with the battalion level commander. If a recommendation is for a general, rather than honorable discharge, additional procedures are required to insure that the separating member is aware of the consequences of the discharge.

Evaluation of EDP. The introduction of EDP was also accompanied by a reduction in adverse disciplinary rates. Within three months of its implementation, the Training and Doctrine Command reported that permanent party monthly AWOLs had dropped 9.5%, courts-martial were down 16.5% and discharges for unsuitability and unfitness were reduced by 19.4%. It is also likely that some of the drop in Army-wide rates which occurred at this time could be attributed to the EDP. Commanders at all levels of the Army have endorsed these programs as valuable management tools.

The Navy Program

The Navy's version of the marginal performer program began in November 1973. However, the Navy did have a program for discharging these individuals as early as FY66.

Eligibility criteria for the current program includes less than 36 months of service, pay grade E-3 or below, and in the current unit for

more than 60 days. The Bureau of Naval Personnel (BUPERS) Manual defines marginal performance as: (a) failing to maintain required proficiency in rate, (b) creating an administrative burden to the command due to minor military or disciplinary infractions, or (c) having performance which is noncontributory to unit readiness and mission accomplishment as specifically evidenced by below average performance ratings or specific demonstrated incapacity to meet effectiveness standards...

The responsibility for identifying potential candidates lies with the officers and NCOs in the operating units. Approval for discharge is made by the unit commander having special court-martial authority over the individual. However, if the individual objects to the discharge, the case will be sent to BUPERS for a final determination.

Discharges issued to those undergoing recruit training are always honorable. Discharges of other may be either honorable or general depending upon performance ratings.

Evaluation. BUPERS program managers did not have any studies of the program's effects on the Navy or those being separated. However, it is known that the program does enjoy wide approval among Navy commanding officers.

The Marine Corps Program

The USMC uses two programs to discharge its marginal performers. The first, called the Recruit Failure Program (RFP), is for those still undergoing basic training. Authority to discharge is given to the training center commander. All discharges given are honorable. The authority to discharge under the second program, the Expeditious Discharge Program or

EDP, is vested with commanders having special court-martial jurisdiction.

EDP discharges are either honorable or general.

The basic requirements for both programs are essentially the same. The individual must have less than 3 years of service and be an E-3 or below. The member must not be undergoing medical treatment and/or physical disability processing. The member must not be undergoing punishment or awaiting disposition of charges under the UCMJ. It must be clearly demonstrated that the member cannot or will not meet acceptable standards because of poor attitude, lack of motivation, lack of self-discipline, inability to adapt socially or emotionally to service requirements, or having failed to demonstrate future potential (e.g., behavior leading to a promotion).

The principal difference is that the RFP requires that the individual must still be undergoing recruit training. The EDP requires that they be on their initial enlistments with at least 180 days, but not more than 36 months, continuous active service. The RFP became operational in December 1977. During the first five months, an average of 129 individuals per month were separated under RFP.

The EDP became operational in November 1975. During FY76, FY77, and FY 77, there were 3644, 2027 and 2042 individuals discharged under this program. Most of those discharged received general discharges.

Evaluation of RFP and EDP. Headquarters Marine Corps believes its marginal performer programs are serving their intended purpose of expeditiously discharging nonproductive members and that the programs are not leading to unnecessary attrition.

Selected Comparison of Marginal Performer Programs

Table 10 reflects the percentage of Honorable Discharges issued under the marginal performer program of the Services. It is significant because it graphically reflects the wide disparity in Service implementation of this program.

Table 10

Percent (rounded) Honorable Discharges Issued to Marginal Performers FY74 - FY77

Fiscal Year	Army	Navy	Marine Corps ^{1/}	Air Force	DoD
1974	88%	0%	--	100%	86%
1975	78	0	--	100	81
1976	66	0	14	100	68
1977	71	8	9	100	71
1977	<u>68</u>	<u>15</u>	<u>18</u>	<u>100</u>	<u>70</u>
Average	73	3	14	100	74

1/ The marginal performer program did not start until November 1975

Section IV was extracted from a DoD report to the White House on the Status of the Vietnam-era veterans. It is included here because of its discussion of many of the topics of concern to present policy makers that are raised anew by the data in the previous sections. These include: (1) comparability and equity of treatment of successive generations of veterans, (2) equality of treatment across services, (3) the role of pre-service characteristics and service experiences in the eventual characterization of service, and (4) the effects of characterization of service upon post-service life.

IV. ANALYSIS OF THE EFFECTS OF THE ADMINISTRATIVE DISCHARGE SYSTEM
ON THE VIETNAM-ERA VETERAN ^{1/}

To address how this system affects the Vietnam-era veteran we must define the Vietnam-era, identify the types of discharges given, and describe the characteristics of the servicemember who received them.

The Vietnam-era

The Vietnam-era has been defined as the time between 4 August 1964, the date of the Gulf of Tonkin Resolution, and 28 March 1973, when U.S. forces were withdrawn from Vietnam. These dates were used to establish eligibility for the Presidential Clemency Program and the DoD Special Discharge Review Program (SDRP) for Vietnam-era veterans. The official termination date is 7 May 1975, the date President Ford signed the proclamation ending the Vietnam-era. Except for in Table 11, this report will use the period 4 August 1964 to 7 May 1975.

Table 11 shows that period and branch of service have a direct correlation to the probability of serving in a combat zone. For example, fully 900,000 Period II veterans of the Vietnam-era entered service after U.S. forces were withdrawn from Vietnam. Moreover, only 39% of those who served before the withdrawal (Period I) were stationed in Southeast Asia; 29% were stationed in South Vietnam.

The Army and the Marine Corps had heavier commitments of personnel within South Vietnam than did the Navy and the Air Force. The latter two Services operated extensively from off shore and from Thailand respectively.

Table 11

Comparison Of Number (in 000s) and Percent (rounded) of Military
Personnel in Southeast Asia: Period I (August 64 - March 73)
Period II (August 64 - May 75)

Location of Service	Army	Navy	Marine	Air Force	DoD
<u>Number serving in</u>					
Southeast Asia ^{1/}					
In S. Vietnam ^{2/}	1,643	144	488	359	2,594
In Thailand	54	1	5	236	295
Off Shore	0	509	5	0	514
Total	1,697	654	498	595	3,403
<u>No. serving elsewhere ^{3/}</u>					
Period I	2,672	1,200	344	1,160	5,397
(Period II)	(3,097)	(1,388)	(451)	(1,340)	(6,256)
Total serving during ^{4/}					
Period I	4,389	1,854	802	1,735	8,000
(Period II)	(4,793)	(2,042)	(909)	(1,938)	(9,659)
<u>Percent serving in</u>					
Southeast Asia during					
Period I (II)					
In Vietnam	37% (34%)	8% (7%)	56% (49%)	20% (19%)	29% (27%)
In Thailand	1 (1)	> .5 (> .5)	1 (> .5)	13 (13)	3 (3)
Off Shore	0 (0)	27 (25)	1 (1)	0 (0)	6 (5)
Total	39% (34%)	35% (32%)	57% (50%)	34% (31%)	39% (35%)

NOTE: Explanations of footnotes for this and all subsequent tables appear at the end of this part.

^{1/} Extracted from DoD Status of Vietnam Era Veterans - Report on Military Status, May 1978.

Characterization of Discharges

Table 12 shows a comparison of the honorable and less than honorable discharges issued by DoD during three eras of conflict: World War II, Korea, and Vietnam. For the purposes of this table, all less than honorable discharges have been grouped together to avoid the problems of trying to reconcile the differences between how the Army and Navy were characterizing discharges prior to 1947.

Table 12

Comparison of the Number (in 000s) and Percent (rounded) of Honorable
and Less Than Honorable Discharges Given During Three Conflicts

Type of Discharge	Conflict					
	World War II ^{5/}		Korea ^{6/}		Vietnam ^{7/}	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
Honorable ^{8/}	11,202	85.1%	1,811	94.6%	8,393	93.2%
Less Than Honorable	<u>1,963</u>	<u>14.9%</u>	<u>104</u>	<u>5.4%</u>	<u>614</u>	<u>6.8%</u>
Total	13,166	100.0%	1,914	100.0%	9,007	100.0%

Table 12 clearly shows that those discharged during the World War II era had a lower probability of receiving an honorable discharge than those being discharged during the latter two conflicts. Although this analysis would seem to suggest that the World War II veteran either gave less satisfactory service or was subjected to a harsher system, that conclusion is overly simplistic. The end of World War II was marked by a massive demobilization (and issuance of honorable discharges) part of which is missed by the compilation underpinning Table 12. Many of the World War II veterans remained in service and eventually got honorable discharges. For example, although this Table shows what happened to 13 million veterans, there were over 16 million American veterans from that conflict. Concentrating on discharges issued during an era, rather than on the veterans of that era, has the natural bias of over representation of those who are not performing satisfactorily and thus are being discharged even while the fighting continues.

The Korean and Vietnam-era statistics are much more easily compared since the characterization of discharge was essentially the same and the method of serving was the same, i.e., the possibility of leaving service after serving for a fixed period of time rather than by demobilization as in World War II. The percent of honorable discharges during the Korean conflict was essentially the same as for Vietnam (95% vs. 93%, respectively).

Table 13 shows the distribution and variation in the types of discharges during the Vietnam-era. Approximately 93% of all Army and Navy discharges during the Vietnam-era were honorable. The Air Force issued honorable discharges to 97% of its members, and the Marine Corps rate was 89%. The Army and the Marine Corps made extensive use of the undesirable discharge. The Army issued 50% of all discharges, but 70% of the undesirable discharges. The Marine Corps accounted for only 9% of all discharges, but 15% of the undesirable discharges.

Different explanations have been offered for these variations. They range from the opinion that they are attributable to the quality of personnel each Service enlists to the conclusion that the Services handle similar cases differently. These variations have remained fairly constant over the last 30 years, which is indicative of individual Service characteristics and different accession criteria and requirements.

Table 13

Number (in 000s) and Percent (rounded) of Discharges issued by Type and Service During the Vietnam-era (Aug 64 thru May 75)

	ARMY		NAVY		MARINES		AIR FORCE		DoD	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Under Honorable Conditions:										
Honorable (HD)	4,190	92.8%	1,854	93.2%	744	88.9%	1,605	96.5%	8,393	93.2%
General (GD)	150	3.3	100	5.0	44	5.3	50	3.0	344	3.8
Sub Total	4,341	96.1%	1,954	98.2%	788	94.2%	1,655	99.4%	8,738	97.0%
Under Other Than Honorable Conditions:										
Undesirable (UD)	164	3.6%	25	1.3%	36	4.3%	7	>.5%	233	2.6%
Bad Conduct (BCD)	10	>.5	10	.5	13	1.5	2	>.5	35	.4
Dishonorable (DD)	2	>.5	0	>.5	0	>.5	0	>.5	2	>.5
Sub Total	176	3.9%	35	1.8%	49	5.8%	9	0.5%	270	3.0%
TOTAL	4,517	100%	1,989	100%	837	100%	1,664	100%	9,007	100%

Relation of Type of Discharge to
Characteristics of Servicemember

This analysis is based upon automated DoD-wide information for FY 1971 through FY 1975. Although it does not fully describe the entire Vietnam-era, especially service in Southeast Asia, it is a representative sample. Table 14 displays characteristics which Vietnam-era veterans possessed prior to their entry on active duty. They are discussed because they are often cited as affecting both the type of discharge and post-service readjustment.

Table 14

Relation of Entry Characteristics and Type of Discharge for Veterans
(FY71-FY75--Only DoD-Wide Automated Data Available)

Percent of Discharges During Period (N=3,155,000)	Characteristics	Type of Discharge		
		Honorable (N=2,783,000)	General (N=208,000)	Other (UD,BCD,DD) (N=164,000)
	<u>Region</u> ^{10/}			
33%	South	33%	32%	37%
29	North Central	30	29	27
19	North East	19	20	17
<u>18</u>	West	<u>18</u>	<u>19</u>	<u>18</u>
	<u>Race</u> ^{11/}			
10%	Black	9%	20%	19%
<u>90%</u>	Non-Black	<u>91</u>	<u>80</u>	<u>81</u>
	<u>Education</u>			
22%	Non-Graduate	19%	51%	56%
61	High School	63	46	39
<u>17</u>	Beyond High School	<u>18</u>	<u>4</u>	<u>5</u>
	<u>Mental Category</u>			
6%	I (93-100%ile)	6%	2%	1%
32	II (65-92%ile)	34	24	14
42	III (31-64%ile)	41	51	49
<u>21</u>	IV-V (0-30%ile)	<u>19</u>	<u>24</u>	<u>36</u>
	<u>Method of Entry</u>			
77%	Volunteer	76%	91%	85%
<u>23</u>	Draftee	<u>24</u>	<u>9</u>	<u>15</u>
50%	Army	49%	44%	73%
22	Navy	22	31	8
10	Marine Corps	9	13	17
<u>19</u>	Air Force	<u>20</u>	<u>11</u>	<u>3</u>

The region of the United States which the servicemember lists as his home of record is only slightly related to type of discharge. The largest variation above the norm was that Southerners received 4% more undesirable discharges, bad conduct discharges, and dishonorable discharges than their population would indicate.

Although blacks accounted for only 10% of the discharges during this period, they received 20% of the general discharges and 19% of the undesirable discharges, bad conduct discharges, and dishonorable discharges. Although this reflects a correlation between race and type of discharge, it should be recognized that the vast majority of both races received honorable discharges (80.6% black, 89.2% non-black).

Non-high school graduates are more than twice as likely to be in one of the two less than honorable discharge groups than their percentage of the population would suggest. This characteristic has a well known and substantial correlation both to the type of discharge and to post-service employment.

Scores on the Armed Forces Qualification Test are reported as percentiles of the draft age population. The percentiles are then subdivided into the five categories shown on Table 14. The lower the mental score, the greater the likelihood of a less than honorable discharge.

Table 14 shows that there is a direct correlation between the type of discharge and the method of entering the service. Vietnam-era volunteers (principally in the Army) were more likely to receive less than honorable discharges. During that era, draftees tended to be more educated, white, and to have higher Armed Forces Qualification Test scores. This was a function of the balanced demographics which the draft produced rather than a product of the act of volunteering itself.

Table 14, like Table 13, shows that a substantial relationship between branch of Service and type of discharge exists. Among general discharge holders, the Navy seems over represented and the Air Force under represented. The Army and the Marine Corps are likely to issue more other than honorable discharges than their representative percentage of total separations would indicate. The converse is true for the Navy and Air Force in this latter category.

In summary, Table 14 shows those not receiving honorable discharges tend to be high school dropouts in the lower mental categories. In the Army, the only service with significant numbers of draftees, volunteers were also more likely to receive less than honorable discharges. Although the overwhelming majority of those receiving less than honorable discharges were non-black, blacks have a larger percentage among this group than their overall representation in the Services would suggest.

Table 15 shows characteristics of the Vietnam-era veterans once they entered service.

Table 15

THIS PAGE IS BEST QUALITY PRACTICABLE

FROM COPY FURNISHED TO DDC

Relation of Service Characteristics and Type of Discharge for Veterans
(FY71-FY75--Only DoD-Wide Automated Data Available)

Percent of Discharges During Period (N=1,155,000)	Characteristic	Type of Discharge		
		Honorable (N=2,781,000)	General (N=108,000)	Other (UD, BCD, DD) (N=164,000)
<u>Military Occupation</u>				
17%	Combat	16%	18%	26%
7	Electronics	7	3	2
7	Communications	7	4	4
4	Medical	4	3	2
2	Technical	2	1	>.5
17	Administrative	18	11	10
18	Repair	19	16	13
5	Craftsman	5	4	3
12	Supply	12	11	16
11	Trainee	9	30	23
<u>Length of Service</u>				
8%	0-6 months	7%	17%	5%
4	7-12	2	19	16
32	13-24	32	34	35
18	25-36	18	16	21
20	37-48	22	7	10
13	49 months-20 years	14	8	12
5	more than 20 years	6	0	0
<u>Pay Grade</u>				
11%	E-1	7%	37%	40%
9	E-2	5	34	34
12	E-3	12	17	13
37	E-4	41	9	9
21	E-5	24	3	3
10	E-6 or above	11	1	1
<u>Served in Vietnam</u> ^{12/}				
17%	Yes	18%	7%	10%
83	No	82	93	90
<u>Age at Separation</u>				
5%	Less than 19	4%	21%	13%
6	19	5	21	18
10	20	9	20	19
18	21	18	15	17
19	22	20	9	11
14	23	15	5	7
8	24	8	3	5
4	25	5	2	3
6	26-30	7	4	5
6	31-40	6	1	1
4	41 and over	3	>.5	1
<u>Reason for Separation</u>				
27%	Early Release	30%	0%	0%
24%	Complete Tour	27	0	0
14	Early Release (RIF)	16	0	0
7	20-30 Year; Retire	8	0	0
2	Prior Med. Condition	2	0	0
2	Dependency/Hardship	2	0	0
4	Character/Behavior Disorders	2	26	1
2	Unsuitable, Reason Unknown	1	17	3
1	Motivation Problem	>.5	16	0
1	Drugs	>.5	10	2
1	Shirking	>.5	9	11
0	Fraud Entry	>.5	6	1
4	In Line of Court-Martial	0	6	62
1	Court Martial	0	0	11
11	Other	9	10	9

This analysis is based upon automated DoD-wide information for FY 1971 through FY 1975. Although it does not fully describe the entire Vietnam-era, especially service in Southeast Asia, it is a representative sample. Combat and supply specialties tend to receive a disproportionate share of less than honorable discharges relative to their strength. Because more highly qualified personnel are required for the technically demanding occupations, the combat specialty tends to have many of the less educated and lower mental categories as reflected in Table 14.

Those honorably discharged also had a markedly different pattern of reasons for separation. The vast majority had "normal" separations (e.g., end of tour, retirement, or early release for the convenience of the government or the servicemember). Those receiving general discharges tended to receive them for unsuitability - e.g., character disorders and motivational problems. In contrast, those separated with other than honorable discharges failed to meet military standards of performance or conduct. The vast majority of these involved discharge in lieu of court-martial for absentee offenses.

In summary, Table 15 reflects that the servicemember with a less than honorable discharge was in a lower skill occupation, remained in service a short period of time, remained in a low rank, did not serve in Vietnam, was relatively young at separation and was separated because of unauthorized absence or unsatisfactory performance.

Effects of Characterization of Discharge on Post-Service Life

Characterization of discharges serves the military purposes previously discussed. It assists other government agencies in determining eligibility for benefits.¹³ It is also used in a variety of ways in the civilian sector, although DoD did not design characterization for this purpose.

Uses by Governmental Agencies

A comprehensive listing of benefits gained through military service and the effects of characterization appears at the end of this Part.

Employment

The major empirical studies of employer attitudes towards hiring veterans have reached the same conclusions:

1. Employers prefer honorably discharged veterans to other applicants.
2. Employers prefer other applicants to veterans with less than honorable discharges.

3. Among less than honorably discharged veterans, there is a distinct hierarchy of employer preference which parallels the severity of the discharges.

Although major studies agree (Jones, 1973; Pearman, 1975; and Sieberling in 1977 hearings before a Select Subcommittee of the House Veterans' Affairs Committee on SDRP), they do not lead directly to conclusions about the reasons for employer preferences. None of the studies asks why an employer prefers one type of discharge to another or even whether a similar reaction to non-veterans might occur if similar, unflattering things were known about their previous employment.

Veterans with less than honorable discharges and those who have tried to help them have described employment difficulties (Jones, 1973; Effron, 1974; Addlestone in 1977 hearings before a Select Subcommittee of the House Veterans' Affairs Committee on SDRP). The problem for some veterans is significant and the solutions are complex. Jones (1973) found that employers did ask about types of discharge but generally accepted the veterans' responses. Only 28% of the large businesses and 25% of the small businesses asked to see discharge certificates. Some veterans with less than honorable discharges may conceal the fact that they were on active duty or claim that they received honorable discharges. Indirect evidence supporting that suggestion exists in that 85% of the deserters participating in the Ford Clemency Program -- all federal fugitives with no discharges -- claimed that they worked "steadily" while AWOL; an additional 11% claimed they worked irregularly. When asked whether being AWOL (and thus without discharges) had caused them any problems, only 13% stated that gaining and holding jobs had been a problem (Bell & Houston, 1976).

Entrance into Professions

Jones (1973) also found that unions, law examiners, and medical examiners were influenced in their decisions by the types of discharges. The degree to which admission to a profession was influenced by a discharge was in direct relationship to the type of discharge -- 46% of the unions, 71% of the law examiners, and 73% of the medical examiners stated that they would automatically reject an applicant with a dishonorable discharge. As expected, medical and law examiners were more insistent upon reviewing discharge certificates although nearly half did not demand to see them.

Other Areas of Civilian Life

There have been some claims that financial institutions view less than honorable discharge holders as poor risks and will not loan money to them (Slavin, 1975), but there are no statistics on the size of the problem. In Jones' study, colleges expressed concern about types of discharge but were much less likely to take any administrative action than were employers, unions, or professional examiners.

**THIS PAGE IS BEST QUALITY PRACTICABLE
FROM COPY FURNISHED TO DDC**

Footnotes

- 1/ Source: Office of DoD Comptroller, Quarterly Report on Military Personnel in South East Asia, 7 May 1973. This is the final report in the series and provides data as of 31 March 1973. Note that after that date U.S. troop strength was limited to a total of 50 officers and the Marine guard at the U.S. Embassy in Saigon.
- 2/ Includes troops stationed in Cambodia and Laos.
- 3/ Obtained by subtracting those serving in Southeast Asia from the total serving during the era.
- 4/ Source: Page 61, Selected Manpower Statistics, Office of DoD Comptroller, June, 1976, shows the cumulative total of those serving during the Vietnam-era prior to the cease fire (27 January, 1973). Period I updates these cumulative totals by adding to this total all new officer and enlisted accessions during the months of February and March. Period II updates them further by adding the new accessions through May 1975.
- 5/ Source: Data for Army (and Army Air Corps) separations during World War II is a table, "Separations of Army Enlisted Men - WW II", published by Office of the Assistant Secretary of Defense (Manpower and Reserve Affairs). Computations are based on the CY42-CY46 data. Source for the Navy separations during World War II is a 12 June 1972 Table, U.S. Navy Enlisted Separations, Fiscal Years 1941 through 1945, published by Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy). Source of Marine Corps data for World War II is a 12 June 1972 Table, "U.S. Marine Corps Enlisted Separations (retirements included) Fiscal Years 1941 thru 1945," published by Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy). Computations for Navy and Marine Corps are based on FY 43 - FY 45 plus half of FY 42.
- 6/ Source: Data for Korean conflict is a March 1978 Table, "Department of Defense Types of Discharges Issued to Enlisted Personnel -- FY 50-FY 77," published by Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (Military Personnel Policy). Computations based on FY51-FY53 data.
- 7/ Source: Data for Vietnam-era is Table 12 of this report.
- 8/ The number of honorable discharges is somewhat inflated since the Navy data referenced above did not subdivide the "honorable separations" into honorable and general discharges. Due to difficulties reconciling Service systems of classifying discharges prior to 1948, all less than honorable discharges are reported as a single number.
- 9/ Source: Service separation data for FY 64 to present maintained by Office of Assistant Secretary of Defense (Manpower Reserve Affairs and Logistics).
- 10/ These regions are used by the U.S. Census Bureau to designate the 50 United States. The home of record at time of separation is reflected as an entry characteristic since entry home of record characteristics are not maintained on the automated files. Persons listing a home of record outside the 50 states are not included in this analysis.

- 11/ During much of the Vietnam-era there were no separate racial designators for Asian American, American Indian, and other racial minorities. Therefore, it is not possible to furnish a complete accounting of minority groups other than blacks.
- 12/ Since this variable only counts those actually stationed in South Vietnam, it underestimates the number involved during the period of armed conflict (See Table 11). It also underestimates the number stationed in South Vietnam since many of those stationed there were separated prior to the start of FY71.

13/ List of Benefits.

Section A: Benefits Administered by the Military Services.

1. Payment for Accrued Leave (60 day career maximum)
2. Death Gratuity (six months pay)
3. Transportation to Home
4. Transportation of Dependents and Household Goods to Home
5. Admission to Soldier's Home
6. Burial in National Cemetery
7. Headstone Marker.

Recipients of honorable or general (under honorable conditions) discharges are eligible for all of the foregoing benefits. Individuals holding other than honorable discharges (formally undesirable) retain eligibility for benefits numbered 2 and 3 above. They lose eligibility for the remainder.

Section B: Benefits Administered by the Veterans Administration

1. Dependency and Indemnity Compensation
2. Compensation for Service-Connected Disability or Death
3. Pension for Non-Service Connected Disability or Death
4. Medal of Honor Roll Pension
5. Insurance
6. Vocational Rehabilitation (DV)
7. Educational Assistance
8. War Orphans' Educational Assistance
9. Home and Other Loans
10. Hospitalization and Domiciliary care
11. Medical and Dental Services
12. Prosthetic Appliances (DV)
13. Guide Dogs and Equipment for Blindness (DV)
14. Special Housing (DV)
15. Automobiles (DV)
16. Funeral and Burial Expenses
17. Burial Flag

Note: DV = Disabled Veteran

Recipients of honorable or general (under honorable conditions) discharges are eligible for all of the foregoing benefits. Except under certain prescribed circumstances, individuals holding other than honorable discharges may receive benefits if the VA concludes that the discharge was under conditions other than dishonorable.

Section C: Benefits Administered by Other Federal Agencies

- 1. Preference for Farm Loans (Department of Agriculture)**
- 2. Preference for Farm and Other Rural Housing Loans
(Department of Agriculture)**
- 3. Civil Service Preference (Civil Service Commission)**
- 4. Civil Service Retirement Credit (Civil Service Commission)**
- 5. Reemployment Rights (Department of Labor)**
- 6. Job Counseling and Employment Placement (Department of Labor)**
- 7. Unemployment Compensation for Ex-Servicemen
(Department of Labor)**
- 8. Naturalization Benefits (Department of Justice, Immigration and
and Naturalization Service)**
- 9. Old Age and Disability Insurance (Social Security Administration)**

Recipients of honorable or general (under honorable conditions) discharges are eligible for all of the foregoing benefits. Individuals holding other than honorable discharges retain eligibility for benefits numbered 1 and 2 above. They lose eligibility for those numbered 3, 4, 5 and 8. They may receive benefits under 6 and 7, if the Secretary of Labor determines that the discharge was issued under conditions other than dishonorable.

V. CONCLUSIONS

FYs 1972 and 1977

Except for the Air Force, there was a dramatic decrease in the percentage of HDS issued and a corresponding increase in the percentage of GDS issued. There has been a dramatic upward swing in all Services of persons receiving HDS for the unsuitability reasons of personality disorder and apathy. There has also been a significant decline DoD-wide in persons receiving OTH discharges for misconduct reasons. These are reflected in an increase from 32% (for drug abuse reasons alone) in FY72 to 79% (for combined personal abuse of drugs and drug abuse reasons) in FY77. These trends tend to lead to the conclusion that, since the end of the Vietnam-era and the start of the All-Volunteer Force, we have been recruiting lower quality personnel, have become more demanding of our people in meeting acceptable standards of conduct and performance, or we have, in fact, changed our standards - if not by formal amendment to the written rules, then by application of those rules. Based upon the Study Group's combined personal experiences, the Group concludes that these trends are a function of all three elements. They are indicative of a requirement to restate our basic regulations to accurately reflect current standards.

FY 1977

Analysis of whether the Military Services treat their personnel -- measured in numbers of HDs issued -- in a similar manner reflects wide disparity treatment. The reasons for the differences have been much debated. The General Accounting Office (1976) and the DoD Task Force on Military Justice (1972 and 1973) pinpoint the problem as unwarranted variance in the way the Services apply the DoD standards. Others attribute the differences to

justifiable variances in rates of infractions which are a function of different accession criteria and requirements. (Stephen, Carroll, and Brown, 1972). Further complicating these views is the fact that, except for the Air Force, there have been radical changes within the Services over the past 12 years in the way they treat their members. For example, during the period FY65-69 the Marine Corps assigned 94% HDs compared to the FY75-77 period, when only 78% received such discharges. Over the same time frame, Army HDs dropped from 95% to 85% and the Navy from 94% to 87% (the preceding statistics include discharges for immediate reenlistment). These facts, in spite of major judicial decisions affecting treatment of drug abuse and fraudulent enlistment, plus congressional action regarding marginal performers, tend to ameliorate the argument that interservice differences are justified because of historical Service application of the rules. The Study Group concludes that overall uniformity is not being achieved in the characterization of service. Further, except for the Air Force, there is no uniformity or historical consistency within the Services as to how they characterize discharges. This leads to an additional conclusion that, as currently drafted, the DoD directive is ineffective in terms of assuring an appropriate level of uniformity is achieved within and among the Services.

A similar conclusion is reached upon analysis of the way the Services apply the various reasons for early termination of active duty. The most striking fact in support of this view is that during FY77, the Air Force -- the most historically consistent Service in the way it treats its personnel -- discharged only 11% for adverse reasons, while the other Services' adverse reasons ranged 22 to 24%.

Marginal Performer Program

The single most frequently used adverse reason for separation during FY77 was marginal performance. More persons were discharged for this reason than for the combined reasons under categories of unsuitability and misconduct. This program has been enthusiastically endorsed by the Services. It had a direct and highly salutary effect on all the normal indicators of problems or disharmony in the Service. Except for the Navy, AWOL and desertion rates are down and overall unit morale is increasing because problem individuals are detected and separated early and quickly. The Study Group concludes that the program is a resounding success; however, there are certain disfunctional matters in need of correction to improve the program. For example, as currently constituted, the program makes separation for unauthorized reasons extremely easy and consequently contributes to unnecessary first-term attrition. In this regard, Army Research Institute studies (the only authoritative work done within the military community on this program) have reflected that nearly half of the Army personnel separated for this reason may have been by sympathetic supervisors responding to members' desires, rather than adhering to explicit program criteria. Further, the Study Group, drawing on its collective experience, believes that a considerable number of cases would have been more appropriately handled under other reasons, but were labeled marginal performance for ease of processing. Other studies have reflected there is misuse of the marginal performer concept because the criteria are somewhat vague and tend to overlap with other established reasons for separation. In addition, statistics reflect a variance of between 3 and

100% HDs for the Navy and the Air Force for this reason, with the Army averaging 73% and the Marine Corps 14%. Finally, many of these persons identified as marginal performers had completed basic and initial skill training, yet they are being discharged and thus released of their six year military service obligation as currently prescribed by the U.S. Code, when they could possibly serve as potential mobilization assets. The Study Group concludes that to cure all of these problems -- and to make a good program an even better one -- the DoD control guidance must be improved. The proposed directive includes appropriate language to effect the necessary changes.

Analysis of Effects of System on Vietnam-era Veterans

In terms of characterization of service, the Vietnam-era veteran fared about the same as those discharged after the Korean Conflict and did significantly better than the World War II member. Only 6.8% of Vietnam-era and 5.4% of the Korean era members received less than HDs, as compared to 14.9% from World War II. During the pre-All-Volunteer Force (AVF) era, the range of veterans' benefits available was more substantial than during any other period. Statistical analysis shows that the probability of receiving a less than Honorable Discharge -- and consequently losing veterans' benefits -- is somewhat predictable based upon certain pre-service factors and service connected circumstances. Among the large array of these variables, the most significant indicator of probable success in the military -- completion of enlistment with an Honorable Discharge -- is pre-service educational level attainment. Non-high school graduates are more than twice as likely not to receive an Honorable Discharge than their percentage of the population would suggest. This same circumstance has been carried to the AVF, since the

1 military must rely heavily on the non-high school graduate as a source of manpower. The Study Group concludes that the process for assigning the "honorable" characterization should be realistically adjusted to accommodate the known capabilities of this large group of servicemembers. This is especially true when one considers the lifelong effect characterization of service has on the individual. Virtually all major empirical studies of employer attitudes have reached the same conclusion -- employers prefer the honorably discharged veteran to other applicants, but prefer other applicants to those veterans with less than an Honorable Discharge. This is not to suggest that requirements or criteria for service should be lowered in any degree. If individuals don't measure up, they should be discharged or transferred to the Individual Ready Reserve (IRR) as potential mobilization assets, but they should not be penalized if the reason for their failure was non-volitional.

Index to
Appendix A

Historical Development of Enlisted Administrative Separations/Discharges

<u>Part</u>	<u>Title</u>	<u>Page</u>
I	Introduction	1
II	Highlights in the Development of the Administrative Discharge System	2
	o Blue Discharge	3
	o Beginnings of Current System	5
	o First Publication of a DoD Directive	5
	o 1962 Senate Hearings	7
	o 1966 Senate Hearings	9
	o 1969 Senate Hearings	10
	o Drug Abuse	12
	o 1971 House Hearings	14
	o 1974 Interservice Working Group	15
	o Marginal Performers	16
	o 1975 House Hearings	16
	o 1977-78 Administrative Discharge Study Group	17
III	Chronological Summary of the Significant Events in the Development of the Administrative Discharge System	19

APPENDIX A

Historical Development of Enlisted Administrative Separations/Discharges

I. INTRODUCTION

Administrative separation is the process by which individuals terminate their service. Most individuals serve for a specified period on active duty, followed by an obligated period of service with a Reserve component, and are eventually honorably discharged. Others may be separated or discharged at the convenience of Government or for other reasons (e.g., disability, retirement, unsuitability, misconduct). Although there is a technical difference between the terms "separation" and "discharge," we will generally use the term discharge interchangeably for ease of reading and to signify the assignment of an appropriate administrative characterization of service to a member's completed period of military service. These characterizations of service are as follows: honorable - based upon proper military behavior and proficient performance of duty; under honorable conditions (General discharge) - when the member's military record is not sufficiently meritorious to warrant an honorable characterization; or under other than honorable conditions - when a member's conduct or performance has been unsatisfactory. Although not fully discussed in this report, the two remaining characterizations are only given as a result of trial by court-martial and are termed punitive discharges (bad conduct and dishonorable).

Throughout the history of the administrative discharge system, Congressional hearings, studies, and bills have repeatedly addressed the alleged shortcomings of the discharge system. The 1962 Senate hearings gave rise to some of the more significant changes in this system. Many bills have

been proposed over the years without being passed. However, several of the suggestions were adopted when the provisions were considered essential to further protect the servicemember or to improve the system.

Much of the criticism concerning the discharge system seems to have arisen from differences among the Services in dealing with problems. Yet by law, the Secretaries of the Military Departments have been granted broad authority to discharge members and to administer their discharge programs (10 USCA 1169, 3012, 5031, 8012). In furtherance of the law, the Department of Defense has issued guidelines in an effort to eliminate inconsistencies and to further enable the Military Departments to exercise their right and duty to remove from military service -- with an appropriate characterization -- those members who clearly demonstrate that they are unqualified for retention.

Complete citations to references contained in this Appendix are contained in Appendix F.

II. HIGHLIGHTS IN THE DEVELOPMENT OF THE ADMINISTRATIVE DISCHARGE SYSTEM

The concept of honorable service has been the primary underpinning of the characterization system throughout our history. The practice of characterization of discharges in the U.S. Armed Forces began in the Revolutionary War and has evolved through several stages. For example, disability benefits for veterans of the War of 1812 were contingent upon an Honorable Discharge. By 1841, discharge certificates contained the phrase "honest and faithful" service. The phrase was either left in or lined through as the discharging officer deemed appropriate. In 1893, Army regulations formally recognized the "Discharge Without Honor" which had been in use since the Civil War.

Blue Discharge

In 1916, the Army began to use a two-tiered system consisting of an honorable and a lesser discharge. The lesser discharge certificate was printed on blue paper, and became known as the "Blue Discharge". Since this type of discharge failed to specify the exact character of a member's service, it became a topic of discussion before the House of Representatives, Committee on Military Affairs, 79th Congress in 1946.

The Blue Discharge was associated with the class of discharges referred to as Section 8 discharges (terminology now obsolete) which were given on the grounds of "undesirable habits and traits of character." The effect upon the recipient of this discharge was very serious and resembled those effects similar to a member receiving a Dishonorable Discharge. In fact, members have requested a Dishonorable Discharge instead of the Blue Discharge believing that it would be easier to explain. By presenting a Blue Discharge to a prospective employer, immediate suspicion was raised which prevented the member from getting or holding a job. In addition to this, the member did not get mustering-out pay, was barred from receiving unemployment compensation, was ineligible for membership in the American Legion and certain other veterans' organizations, and was unable to get acceptance as either a student or teacher at some colleges. However, the Veterans Administration did not take the discharge at face value but sought to resolve the conditions under which the member was discharged to establish eligibility for benefits.

The stigma associated with the Blue Discharge was enhanced by the very nature of the certificate as it very much resembled a Dishonorable Discharge (DD). A striking color (blue) was adopted for this certificate and paralleled the colored (yellow) certificate of the DD, to call attention

to its extraordinary nature. The type was just as big even though the word "dishonorable" did not appear.

Because of the effects associated with the Blue Discharge, the process for issuing it was also reviewed. The issuance of this discharge was determined by a board of officers. While before the board, the member was not entitled to have counsel, and was not given a record of the proceedings. Although permitted, no rights existed which allowed the member to be present at the hearing and to cross-examine witnesses testifying against him/her.

Considering the stigma, the close association to the DD, and the method for issuing the discharge, it was believed that only action resulting from a court-martial should be the basis for issuing undesirable discharges. Further, many of the mistakes and weaknesses noted during the period of military service may have been correctable during future endeavors. In view of the nature of the member's service during this era when the draft was in force, the Services had a special obligation to see that unqualified members were dismissed with as little prejudice as possible. It was believed that since industry did not brand even an unsatisfactory wage earner from future employment and the discharge from the Service was an administrative means used in the interests of greater efficiency, then no attempt should be made to affix moral labels on an individual. Punitive labels should arise only from judicial proceedings. The hearings culminated with recommendations on the characterization of discharges.

As a result of these hearings, a joint Army-Navy Committee was appointed to consider elimination of the Blue Discharge. Effective 1 June 1946, "General" and "Undesirable" Discharges were introduced into the

discharge system on a test basis. On 1 July 1947, the system was changed by eliminating the Blue Discharge and adopting the three types of administrative discharges now in effect.

Beginnings of Current System

The Selected Service Act of 1948 authorized the Secretary of Defense to establish standards and procedures governing the discharge of military personnel. That resulted in the first formal instruction on discharges applicable to all the Services. It specified the reasons for discharge and incorporated the three characterizations of service already in use. However, guidance on processing was minimal.

First Publication of a DoD Directive

Since the promulgation of the first document addressing administrative discharge procedures, little has changed in the reasons and characterization of discharges. Starting about 1953, a DoD Ad Hoc Committee was formed to evaluate and develop continuity in administering the discharge system. Also, with the advent of the three-tiered discharge system came Congressional interest in the other than honorable discharge. Paralleling the interest of the Ad Hoc Committee, House action in the 85th Congress focused attention on the inconsistencies and the lack of uniformity among the Services in administering policies and procedures when issuing discharges.

Hearings before the Special Subcommittee on Military Discharges of the Committee on Armed Services were primarily concerned with finding a means of bridging the gap between the discharge and exemplary post-service conduct. Throughout the course of the hearings the Undesirable discharge, as well as others, issued under less than honorable conditions, were discussed.

Generating the high interest was the lasting stigma associated with the poor characterization of a member's service while serving in the armed forces. In conjunction with this lasting stigma, a member was unable to obtain employment as the word undesirable had a serious connotation in the eyes of a prospective employer or the average man on the street. Oftentimes society associated the characterization of service with the reason (e.g., homosexuality, personality disorder) for discharge. To many civilians there was little or no difference between the individual who was discharged other than honorably and the individual who was discharged dishonorably.

In further assessing the poor characterization of a discharge, it was the belief that many of the recipients were unable to adjust simply because of their youth and inexperience. Both the Dishonorable and the Bad Conduct Discharge are awarded via the court-martial system which provides protection for the rights of the servicemember. Undesirable Discharges, however, were awarded administratively and the procedures for awarding such discharges varied considerably among the Services. Little distinction was made to separate the member who had committed a series of minor infractions from the member who had been convicted of a felony or from the member who had admitted to being a homosexual. Since a DoD Ad Hoc Committee was reviewing discharge procedures, the committee did not dwell on the issue. The committee recommended that the Services initiate action to differentiate among the various types of Undesirable Discharges and to establish uniform procedures for the handling of administrative discharges among the four Services. The first DoD Directive concerning administrative discharges in 1959 resulted from this Congressional concern

and the efforts of the committee. Modifications were instituted to provide protection for the rights of the servicemember. The Directive added to the reasons for discharge and allowed for more favorable characterization in certain cases. Most significantly, it required that an individual be given the opportunity to present his or her case to a board of officers when the commander recommended that an Undesirable Discharge be issued.

1962 Senate Hearings

The enactment of the Uniform Code of Military Justice (UCMJ) in 1950 included a number of safeguards to protect the constitutional rights of the servicemember. With its passage, attention was again drawn to the administrative discharge process. In the early 1960s, criticism of the discharge system became increasingly prominent and appeared to snowball after Chief Judge of the Court of Military Appeals stated that he was aware of occasions in which the administrative discharge was being used by the Services to circumvent the judicial safeguards of the UCMJ (*United States v Phipps*, 12 U.S.C.M.A. 14, 30 C.M.R. 14 (1960)). The fallout ignited Congressional investigations of the administrative discharge system after years of piecemeal efforts. Upon completion of the initial research, it was discovered that a number of inadequacies existed. In 1962, hearings of the Senate Subcommittee on Constitutional Rights, under the chairmanship of Senator Sam J. Ervin, were convened to address the problems.

The hearings primarily revolved around the Undesirable Discharge and the differences among the Services for its issuance. The General Discharge was briefly addressed because it also generated unfavorable connotations, although to a lesser extent. One problem area indicated

that few people understood the difference between a Dishonorable Discharge resulting from a trial by general court-martial and an administratively issued Undesirable Discharge.

When a member was to be considered for an administrative discharge, he/she was not always provided with legally qualified counsel before waiving any rights that he/she might have had. If an administrative discharge board was elected, the criteria for providing counsel was based upon reasonable availability. Unfortunately, the military counsel provided may not have been a member of the bar or even possess much experience. No provisions existed which enabled the respondent to confront an accuser or to obtain assistance in producing witnesses before the board. This lack of an opportunity to confront an accuser was deemed to infringe upon the rights of the servicemember. Without counsel, the member had no one to assist in contesting the discharge. Also of concern was the fact that no requirement existed which provided a law officer, legal adviser, or board member with legal experience to advise the discharge boards on legal points that may have arisen during the discharge proceedings. This was a critical issue in view of the consequences of an Undesirable Discharge.

To further complicate the issue, a member was not provided with a copy of the proceedings. He could be discharged while an appeal was pending on a civil conviction and no formal provisions were in effect to suspend a discharge and place the member in a probationary status. Criticism also addressed the power the Services had to discharge members because of indebtedness. Since criminal prosecution was generally not permitted in the United States, it was believed that this authority should be used sparingly.

The final area of concern about administrative discharges was that of double jeopardy. Within the scope of these hearings, it was disclosed that there was no prohibition against discharging a servicemember as undesirable because of alleged acts for which he/she had been tried by court-martial and acquitted. In addition, criticism arose concerning the procedure which authorized referring a case to a second board, if the reviewing authority disagreed with the findings or recommendations of the first board.

All areas under review by the subcommittee were compared with applicable provisions of the UCMJ. This comparison highlighted the need to implement new procedures for issuing administrative discharges.

The Secretary of Defense, responding to the action of the committee, issued a new Directive in 1965. Some new reasons for discharging were added, but the principal changes curtailed commanders' prerogatives and increased the servicemembers' rights. Entitlement to a board was expanded; board composition was modified to provide for representation by women and reservists; a respondent had a right to a lawyer at a board hearing; and a commander could override a board's recommendation for retention only by issuing an Honorable or General Discharge. The Directive also included a requirement that a commander attempt to rehabilitate certain persons prior to discharge processing, specified evaluation measures to determine if discharge were warranted, and required periodic explanation of the discharge system and its effects on all service personnel.

1966 Senate Hearings

Subsequent to the promulgation of the 1965 directive, additional hearings were held dealing with the rights of servicemembers. In essence these hearings were an extension of the hearings held in 1962. The 1962

AD-A060 521

ASSISTANT SECRETARY OF DEFENSE (MANPOWER RESERVE AFFA--ETC F/G 5/9
REPORT OF THE JOINT-SERVICE ADMINISTRATIVE DISCHARGE STUDY GROU--ETC(U)
AUG 78

UNCLASSIFIED

NL

3 OF 4

AD
A060521

100
 100
 100

endeavor was primarily a fact-finding session, while the 1966 hearings were convened to review proposed legislation that grew out of the previous hearings. In evaluating the proposed legislation, the same areas of concern arose as had been discussed during the earlier hearings. Although the Department of Defense had recently issued a new directive which included many of the recommendations from the 1962 hearings, the 1966 hearings were held to determine if the proposed bills should be enacted into law. The only provision not yet incorporated into the new directive concerned the issue of double jeopardy.

However, DoD published a change to the 1965 Directive with an effective date of 19 January 1966 -- the second day of the hearings. The first change prohibited the convening of an administrative discharge board after an acquittal or dismissal by a court-martial, except when such action did not result from litigation on the merits of the case. The other change prohibited a commander from convening a second administrative board to reevaluate information which a previous board had considered.

For the most part, all members appearing before the Committee supported the proposed bills believing that their enactment was essential to insure better protection for the constitutional rights of servicemembers. All bills were read twice and referred to the Committee on Armed Services. No further action was taken.

1969 Senate Hearings

The next major change was prompted by hearings in 1969 before the Senate Armed Services Subcommittee on Treatment of Deserters from Military Service, which addressed the widespread concern about the seriousness of

desertions from the armed forces. Interest in this area was sharpened by news reports of what appeared to be surprisingly light sentences prescribed for the offense of unauthorized absence from military service. During the hearings, the subcommittee acknowledged that desertion was indeed a problem inherent with military service during a period of hostility. It further concluded that the problem occurred even in the most tranquil international conditions. Because of the exceptional seriousness of the offense of desertion and the need to insure that justice was provided in support of those who had served honorably, it was deemed essential that firm and fair punishment be administered to those who were guilty of desertion or prolonged unauthorized absence.

During the course of the hearings, the policy concerning "discharge in-absentia" was discussed. Here again, the problem was that members so discharged were able to escape punishment under the UCMJ. In essence this type of discharge (undesirable) was considered to be a reward for a person who could stay in a deserter status long enough and thus avoid returning to U.S. military jurisdiction. However, it was disclosed that this procedure was not used for U.S. citizens. Regardless of the application of this procedure, it was not believed to constitute an appropriate punishment and prevented possible prosecution for other criminal offenses not discovered until the deserter had returned to military control. Such a discharge would subvert the military justice mechanism by permitting the offender to avoid later trial. Discharge in-absentia, after the mere passage of time, would also result in further inequities in punishment. It was recommended, therefore, that the provision in the DoD directive be discontinued. As a result of these hearings, DoD suspended authorization for general use of

the discharge in-absentia provision. Its use was limited to those circumstances where prosecution for unauthorized absence was barred by statute of limitations or where the member was an alien who had gone to a foreign country where the U.S. had no authority to apprehend.

Drug Abuse

The final change to this edition of the Directive dealt primarily with drugs. During 1971, the concern over increased drug use by military members was gaining momentum. As a result, the President's drug abuse prevention program was announced on 17 June 1971 with the issuance of Executive Order 11599. That order established a Special Action Office for Drug Abuse Prevention within the Executive Office of the President to mount a coordinated national effort to address the drug problem which had reached alarming proportions. The Secretary of Defense, in a 17 June 1971 communication, directed the Secretaries of the Military Departments to give urgent, priority attention to developing plans designed to meet the drug problem that was increasing among the armed forces in Vietnam.

On 7 July 1971, DoD announced a program which enabled members to voluntarily seek needed rehabilitation without being subject to receiving an Undesirable Discharge. Unfortunately, this did not assist those members discharged prior to 7 July 1971. Therefore, on 13 August 1971, the Secretary of Defense announced that administrative discharges given on or before 7 July 1971 to servicemembers discharged under other than honorable conditions, if issued solely on the basis of personal use or possession of drugs, would, upon request, be reviewed for possible recharacterization to a discharge under honorable conditions. This policy review for recharacterization of discharges was expanded on 28 April 1972 to include punitive discharges

and dismissals resulting from approved sentences of court-martial issued solely for conviction of personal use or possession of drugs. The review of both categories was applicable only to discharges executed on or before 7 July 1971 or issued as a result of a case under review on or before 7 July 1971.

Members discharged solely for the use and possession of drugs prior to July 1971 were given an Undesirable Discharge, thus practically eliminating their eligibility to receive VA benefits, particularly treatment at a hospital for a drug problem. With implementation of the program to recharacterize the discharges, these members were now able to receive medical assistance.

In conjunction with this, on 21 November 1972, Raymond Bonner, a former Marine and Vietnam veteran, filed a suit against the Secretary of Defense for failure to properly notify former servicemembers concerning the recharacterization of their discharges. As a result of numerous meetings and written communications between both the plaintiff and parties representing the defendant, it was determined that certain steps by the defendant could be undertaken without undue stress or monetary constraints. Therefore, on 13 November 1973, the United States District Court ruled in favor of the plaintiff requiring the defendant to undertake a program to notify an agreed upon number of individuals by mail, concerning their eligibility for recharacterization of their discharges. The lack of sufficient notification of members eligible for recharacterization of their discharges was also addressed in a GAO report dated 30 November 1973. This report only supported the ruling of the court.

The changed attitude toward drugs, as documented by the 1971 initiatives, was only one factor influencing the 1973 change to the DoD directive. Also related to this issue was an inquiry from the Assistant Secretary of

Defense (M&RA) on 1 August 1972. This memorandum posed two questions to all Military Departments:

(1) Are the present reasons for discharge too restrictive? Should there be additional reasons for discharge?

(2) Are the present separation program numbers sufficient for our needs, particularly in the areas of drug abuse and alcoholism? Should there be different separation programs for different categories of drug abusers or alcoholism?

Based upon the inputs received, changes were made in the directive. These changes clarified the reasons for administrative discharges relating to drug and alcohol abuse and clearly differentiated between those individuals who wanted to help themselves and those who did not. Similarly, provisions were made for discharge of individuals who failed to cooperate or refused to participate in an alcohol rehabilitation program.

1971 House Hearings

The drug issue in 1971 was not the only issue under discussion. Also this same year, hearings before Subcommittee No. 3 of the Committee on Armed Forces, House of Representatives, 92nd Congress, were held to determine if a need existed for enacting into law provisions governing the issuance of a discharge under other than honorable conditions (Undesirable). Because of the known stigma associated with the Undesirable Discharge, as well as the knowledge that eligibility for veterans' benefits and the ability to obtain employment were affected, the proposed legislation was, for the most part, supported by those who testified before the committee. By enacting the bill into law, it would eliminate the possibility of using administrative separations as a substitute for punitive action. This use of administrative separations was the subject of repeated complaints particularly

because of the greater extent to which it was being used since the advent of tightened procedures under the UCMJ. Also, a Federal statute would prevent the alteration or modification of current regulations which could be changed at any time. One of the criticisms under discussion was the right of confrontation. The absence of statutory authority precluded the extension of certain rights, such as the right to confront a witness. Within the proposed statute was a provision authorizing subpoena power.

At the conclusion of the hearings, a modified version of the bill which included recommendations made during the hearings was proposed. Upon presentation before the Committee it was passed; however, the bill died in the Senate. This bill was reintroduced as H.R. 86 before the 93rd Congress with no action ever being taken. The modified bill was supported by the Department of Defense because it would preserve and tend to complement the current administrative separation system.

1974 Interservice Working Group

In 1974, the Interservice Working Group was formed to review the discharge system. The recommendations from the 1971 hearings, coupled with recommendations from the 1972 DoD Task Force on Military Justice, were taken into consideration when shaping the proposed changes to the DoD Directive. The Working Group produced a new directive that was published in 1975 and became effective in April 1976. These changes were many and varied. The most significant was the elimination of the "unfitness" category of reasons for separation. Another change required that a member recommended for a General Discharge was entitled to consult with legal counsel even though no board was involved. Also, minority members could

request minority representation on the board. It also incorporated the policy removing pregnancy as a basis for involuntary discharge, and formalized the drug abuse programs outlined previously.

Marginal Performers

One of the most significant additions to the administrative discharge system was made shortly after the issuance of the 1975 Directive. This addition identified a new reason for separation -- marginal performers. The House Appropriations Committee report 93-622 of 26 November 1973 first raised the need for implementation of this concept DoD-wide. In April 1975, the GAO submitted a report entitled, "Urgent Need for a DoD Marginal Performer Discharge Program," which further supported the idea. This report disclosed that all Services, except the Marine Corps, had some version of a program under different labels for expeditiously removing marginal performers. Unfortunately, as pointed out in this study, various inconsistencies existed among the Services' implementation of this program. As a result, DoD promulgated guidelines to be used when considering a servicemember for discharge as a marginal performer with a view toward expeditiously eliminating non-contributing members at low cost, prior to the member qualifying for separation for some adverse reason with less than an honorable discharge.

1975 House Hearings

Primarily because of continuing Congressional concern over its due process aspects, the administrative discharge system became the subject of extensive hearings before the House Armed Services Committee, Subcommittee on Military Personnel, during November 1975. Use of the term, "Undesirable Discharge," was criticized as being unfair to the member in certain cases and its lack of uniform application among the Services was another issue of

concern. During the hearings, DoD was concerned that the term currently had a harsher effect than had been originally intended. Because of this modern language connotation, it appeared that a member receiving a Bad Conduct Discharge would probably fair better than an individual receiving an Undesirable Discharge. People were inclined to overlook one act of bad conduct, yet were not inclined to overlook undesirability. Based on comments similar to the above, it was agreed that the term should be eliminated and a "Discharge Under Other Than Honorable Conditions," was substituted. The new terminology became effective on 1 January 1977 (see Appendix 6).

Two other additions were made to this directive. The first addition was the conditional waiver procedure with its use optional as authorized at the discretion of the Military Departments. This procedure must be initiated by the member and involves an election to waive his/her right to an administrative discharge board, contingent upon receiving a better characterization of service. Although the new DoD Directive provided DoD-wide sanction for the use of this tool, it had already been used in the Services in various forms as documented by a GAO report on military justice of 1 April 1976. This provision was intended to bring about a greater uniformity among the Services in assessment of characterizations of service for the same or similar offenses. The last modification clarified the intent that both active and inactive service would be computed in determining eligibility for an administrative discharge board when a member was being processed for certain adverse reasons.

1977-78 Administrative Discharge Study Group

In September 1977, a joint-Service administrative discharge study group was appointed to take a fresh look at the entire administrative

characterization system. This action followed a number of legislative proposals, GAO reports, recent court actions, the Ford Clemency Program and the Special Discharge Review Program. Part of its charter required the preparation of a report to the Appropriations Committees on the improvements needed in the apprehension of deserters and the expanded use of the discharge in-absentia provision recommended by the GAO. A report was sent to the Appropriations Committees in May 1978 which limited the use of this provision to those individuals who had been in a prolonged unauthorized absence status for 18 months or more, to those circumstances where prosecution for unauthorized absence was barred by statute of limitations or where the member was an alien who had gone to a foreign country where the U.S. had no authority to apprehend. The study group has also proposed a further major revision of the DoD Directive discussed elsewhere in this study.

III Chronological Summary of the Significant Events in
the Development of the Administrative Discharge System

Revolutionary War - to 1841	Discharges characterized
1841 -	Provided for less than honorable and faithful service characterization by omission
1893 -	Formalized the "Discharge Without Honor"
1916 -	Introduced "Blue Discharge" by the Army
1926 -	The Navy three tiered discharge system - honorable, general, undesirable
1947 -	Adopted three tiered system servicewide
August 1948 -	Initial effort at uniformity in the system by the Department of Defense
January 1959 -	Issued first Department of Defense Directive which implemented provisions for convening an administrative discharge board
December 1965 -	Instituted major expansion in procedural guide- lines and incorporated numerous protections for the rights of servicemembers
January 1966 -	Permitted convening an administrative discharge board when a case was dismissed by a court- martial only if dismissal was for a reason other than the merits of the case
	Prohibited convening an administrative discharge board to evaluate information previously heard by another board
August 1969 -	Discharge in-absentia only if no interference with the military justice system
July 1971 -	Directed that only honorable or general discharges would be given for personal abuse of drugs

August 1971 and April 1972 -	Provided retroactive recharacterization of undesirable discharges issued for personal abuse of drugs both in administrative discharge and court-martial cases
January 1973 -	Provided for consultation with military judge advocate by members being discharged with a general discharge
October 1973 -	Specified circumstances for discharge by reason of alcohol abuse and drug abuse
May 1974 -	Deleted involuntary separation for pregnancy Eliminated use of separation program number or separation program designator on discharge certificate provided to member so that those reviewing it could not discover the reason for discharge
April 1976 -	Deleted term "unfitness" Established specific category for discharge of personal abusers of drugs Precluded adding together misdemeanor offenses to authorize approval of request for discharge in lieu of court-martial Directed that discharge authority cannot discharge if administrative board recommends retention Provided for minority membership on administrative discharge board if member is of a minority group Authorized invitational travel orders for important civilian witnesses for administrative boards Added emphasis and provisions for discharge of marginal performers
December 1976 -	Discontinued the term "Undesirable Discharge" in favor of the term "Discharged Under Other Than Honorable Conditions" Included inactive service with active service in determining eligibility of member for administrative board proceedings involving unsuitability Authorized use of conditional waiver of administrative board proceedings by the member



Appendix B

December 29, 1976

NUMBER 1332.14

ASD(M&RA)

Department of Defense Directive

SUBJECT Enlisted Administrative Separations

Refs.: (a) DoD Directive 1332.14, subject as above,
September 30, 1975 (hereby cancelled)
(b) through (h) (see enclosure 8)

I. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to update the policies, standards and procedures which govern the administrative separation of enlisted persons from the Armed Forces. Reference (a) is hereby superseded and cancelled.

II. APPLICABILITY AND SCOPE

The provisions of this Directive apply to the Regular and Reserve components of the Army, Navy, Air Force, Marine Corps and, by agreement with the Secretary of Transportation, to the Coast Guard. When the term "Military Departments" is used, it also includes the U.S. Coast Guard for the purposes of this Directive.

III. DEFINITIONS

Terms used in this Directive are listed in enclosure 1.

IV. POLICY

A. The Armed Forces have the right and the duty to separate from the Service, with an appropriate characterization of service, those members who clearly demonstrate they are unqualified for

retention. At the same time, such members have rights which shall be protected.

- B. This Directive further provides for separation under certain circumstances or conditions to meet the needs of the Services and members.
- C. Standards and procedures for these policies are prescribed in enclosures 2 through 7.

V. ADMINISTRATIVE DISCHARGE BOARD

- A. Composition. An administrative discharge board shall be comprised of at least three experienced commissioned officers at least one of whom shall be serving in the grade of major/lieutenant commander or higher, and may include a nonvoting recorder. The following additional requirements apply:
 - 1. If the respondent is an enlisted member of a Reserve component or holds an appointment as a Reserve commissioned or warrant officer, the membership shall include a majority of Reserve officers, if reasonably available. Where a Reserve majority is not available, the board shall include at least one Reserve component officer. Voting members shall be senior to the respondent's Reserve grade.
 - 2. If the respondent is an enlisted woman, the board shall, upon the written request of the respondent, include a female officer as a voting member, if such officer is reasonably available. In the event of nonavailability, the reason shall be stated in the record of proceedings.
 - 3. If the respondent is a member of a minority group, the board shall, upon the written request of the respondent, include as a voting member an officer who is also a minority group member, if such officer is reasonably available. When requested, the appointed board member should normally be of the same minority group as the respondent; however, nonavailability of an officer of the same minority group shall not preclude convening the board. In the event of nonavailability, the reason shall be stated in the record of proceedings.

B. Procedures. The board functions as an administrative rather than a judicial body. Strict rules of evidence need not be observed. However, the president may impose reasonable restrictions as to relevancy, competency and materiality of matters considered. When the board meets in closed sessions, only voting members shall be present. The proceedings of the board shall be maintained as prescribed by the Secretary of the Military Department concerned but, as a minimum, shall contain a verbatim record of the findings and recommendations. The board shall recommend one of the following:

1. Retention.
2. Discharge for a specified reason and the appropriate discharge certificate, according to the provisions of this Directive and the applicable Service regulations.

C. Rights of the Respondent. Subject to the requirements prescribed herein, a respondent who has not waived a hearing before an administrative discharge board and whose case is presented to such a board has the following rights:

1. The respondent may appear in person, with or without counsel, or if absent, be represented by counsel at all open proceedings of an administrative discharge board. The respondent may be represented by either military counsel appointed by the convening authority, or by military counsel of his/her own choice, provided the counsel requested is reasonably available, as determined under regulations of the Secretary concerned but not by both. In either case, the respondent may employ civilian counsel at his/her own expense.

*
*

*
*

2. The respondent may challenge any voting member of the board for cause only.

3. The respondent may request the appearance before the board of any witness whose testimony he/she believes to be pertinent to his/her case. The respondent will specify in his/her request the type of information the witness can provide. The board will invite the witness to attend if it considers that the witness is reasonably available and that his/her testimony can add materially to the case. If a witness on active duty declines the invitation, the board may refer the matter to the convening authority for a decision or orders. Witnesses not

Dec 29, 76
1332.14

on active duty must appear voluntarily and at no expense to the Government, except as authorized in implementing regulations of the Military Department concerned.

4. The respondent may, at any time before the board convenes or during the proceedings, submit any answer, deposition, sworn or unsworn statement, affidavit, certificate or stipulation. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.
5. The respondent may or may not submit to examination by the board. The provisions of Article 31, 10 USC 831 (reference (e)), apply.
6. The respondent and his/her counsel may question any witness who appears before the board.
7. Failure of the respondent to invoke any of these rights, after he/she has been apprised of same, cannot be considered as a bar to the board proceedings, findings and recommendations.

D. Actions by Discharge Authority. Upon receipt of the record of board proceedings, the discharge authority may take one of the following actions:

1. Approve the board's recommendations and direct their execution.
2. Approve the board's recommendations for discharge but change the characterization of service to a more favorable one. The discharge authority shall not downgrade the characterization of service.
3. Approve the board's recommendation for discharge but change its basis when the record indicates such action would be appropriate, except that he/she shall not designate misconduct as the basis when the board has recommended discharge for unsuitability.
4. Approve the discharge but suspend its execution for a specified period of probation.

5. Disapprove the recommendation for discharge and retain the member in the Service.
- * 6. May recommend separation to the Secretary concerned, pursuant to paragraph B. 14. (enclosure 2), in the event of a board recommendation for retention, if he/she believes that separation is warranted by the circumstances of the particular case. *
7. Set aside the findings and recommendations and refer the case to a new board if he/she finds legal prejudice to the substantial rights of the respondent. No member of the new board shall have served on a prior board which considered the same matter. The record of the proceedings of the earlier board, minus the findings, recommendations and prejudicial matter, may be furnished the successor board. The discharge authority shall not approve findings or recommendations less favorable to the respondent than those rendered by the previous board.

VI. RESPONSIBILITIES

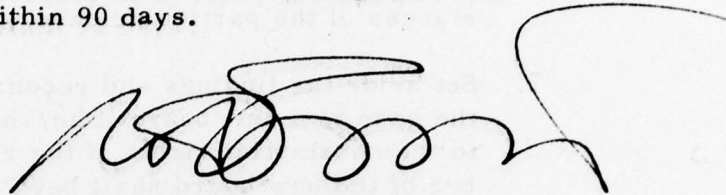
Each of the Armed Forces shall:

- A. Prescribe appropriate internal procedures for periodic explanation to members of the types of discharge certificates, the basis for their issuance and the possible effects of various certificates upon reenlistment, civilian employment, veterans' benefits and related matters. As a minimum, such explanation shall take place each time the Articles of the Uniform Code of Military Justice are explained, pursuant to 10 USC 937 (reference (e)). (Failure on the part of the member to receive or to understand such explanation, however, shall in no event be considered a defense in an administrative discharge proceeding, or a bar thereto.)
- B. Assure that the purpose and scope of the Discharge Review Board and the Board for Correction of Military/Naval Records, established pursuant to 10 USC 1552 and 1553 (reference (g)), is explained during the separation processing of any member discharged under other than honorable conditions.

Dec 29, 76
1332.14

VII. EFFECTIVE DATE AND IMPLEMENTATION

- A. This Directive is effective on January 1, 1977. Nothing in this Directive shall establish grounds for recharacterization of discharges issued prior to this effective date.
- B. Two copies of implementing documents shall be forwarded to the Assistant Secretary of Defense (Manpower and Reserve Affairs) within 90 days.



Robert Ellsworth
Deputy Secretary of Defense

Enclosures - 8

- 1. Definitions
- 2. Reasons for Separation
- 3. Retention or Separation
- 4. Characterization of Service
- 5. Restriction on Certain
Administrative Discharges
- 6. Procedures for Discharge
- 7. Suspension of Execution of
Approved Discharge
- 8. References

Dec 29, 76

DEFINITIONS

- A. Member. An enlisted man or woman of the Armed Forces.
- B. Discharge. Complete severance from all military status.
- C. Release from Active Duty. Termination of active duty status and transfer or reversion to a Reserve component not on active duty.
- D. Separation. A general term which includes discharge and release from active duty.
- E. Administrative Separation. Discharge or release from active duty upon expiration of enlistment or required period of service, or before, in the manner prescribed herein or by law, but specifically excluding separation by sentence of general or special court-martial.
- F. Military Record. Comprises a member's behavior while in military service, including general comportment and performance of duty.
- G. Prior Enlistment or Period of Service. Service in any component of the Armed Forces which culminated in the issuance of a discharge certificate or certificate of service.
- H. Administrative Discharge Board. Appointed to render findings based on facts pertaining, or believed to pertain, to a case and to recommend retention in the Service, or discharge with reason for discharge and type of separation or discharge certificate to be furnished.
- I. Discharge Authority. As established herein and implemented by regulations issued by an Armed Force, an official authorized to take final action with respect to specified types of separation.
- J. Respondent. A member of the Armed Forces who has been notified that action has been initiated to discharge him/her under a specified Service regulation.
- K. Counsel. A lawyer, within the meaning of Article 27(b)(1) of the Uniform Code of Military Justice (reference (e)), unless

Dec 29, 76

appropriate authority certifies in the permanent record the non-availability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel.

- L. Characterization of Service for Administrative Separations. A determination reflecting a member's military behavior and performance of duty during a specific period of service. The three characterizations are: (1) honorable, (2) under honorable conditions, and (3) under other than honorable conditions.
- M. Minority Group. A segment of the population that possesses common traits that are transmissible by descent or common characteristics and a cultural heritage significantly different from that of the general population. Such groups include, but are not limited to Negroes, American Indians, Mexican Americans, Puerto Ricans, Eskimos, Aleuts, Asian Americans and Spanish-Surnamed Americans.

Dec 29, 76

REASONS FOR SEPARATION

Expiration of Enlistment or Fulfillment of Service Obligation. An honorable separation (honorable discharge) or separation under honorable conditions (general discharge) as warranted by the member's military record.

Convenience of the Government. An honorable separation (honorable discharge) or separation under honorable conditions (general discharge) as warranted by the member's military record, for the following reasons:

1. General demobilization, reduction in authorized strength or an order applicable to all members of a class of personnel specified in the order.
2. Acceptance of a commission or appointment or acceptance into a program leading to a commission or appointment in any branch of the Armed Forces, for active duty only.
3. Immediate enlistment or reenlistment.
4. Erroneous induction or enlistment.
5. Separation of members serving in unspecified enlistments.
6. Early separation of personnel under various authorized programs and circumstances.
7. Voluntary separation of women for pregnancy or childbirth.
8. Inability to perform prescribed duties, repetitive absenteeism or nonavailability for worldwide assignment as a result of parenthood.
9. Conscientious objection.
10. Sole surviving son/daughter and certain family members.
11. Condition, not a physical disability, which interferes with performance of duty.

Dec 29, 76

12. Elimination of marginal performers:

- a. Elimination of marginal or nonproductive performers by reason of the member's:**
 - (1) Failure to attain or maintain required job skill proficiency, either by associated inaptitude or nonapplication.
 - (2) Presence creating an administrative burden to the command due to minor military or disciplinary infractions.
 - (3) Performance has been noncontributory to unit readiness and mission accomplishment as specifically evidenced by below average efficiency ratings or specific demonstrated incapacity to meet effectiveness standards.
- b. Application of this provision is limited to members meeting the following criteria:**
 - (1) The members considered must be in their first enlistment, and are otherwise eligible until completion of 36 months of active service, whichever is greater.
 - (2) The member must be medically qualified for separation.
 - (3) The member must have completed any disciplinary punishment.
 - (4) The member must not be about to stand trial for violation of the Uniform Code of Military Justice. Any such charges must have been dismissed, the individual acquitted, or after conviction, appellate review of the case completed prior to separation.
 - (5) The member separated under these provisions must be assigned to: (a) recruit training; (b) initial skill training immediately following recruit training; or (c) an organizational unit for an appropriate period of evaluation, as determined by the Secretary of the Military Department concerned, but not less than 60 days.
- c. These discharges must be approved by specified discharge authority.**

Dec 29, 76

- d. As a minimum, the Military Services should establish procedures wherein rebuttal by an individual being discharged will be considered by the discharge authority.
 - e. Members in recruit training or initial skill training immediately following recruit training, who are separated for this reason, will be separated with an honorable separation (honorable discharge).
13. For such other reasons as may be prescribed by the Secretary of the Military Department concerned.
14. Notwithstanding the specific provisions of this or any other Directive, or any proceedings, decisions or action in accord with this or any other Directive, the Secretary concerned may direct the separation of any member, prior to the expiration of term of service, after determining it to be in the best interest of that Department.
- C. Dependency or Hardship. An honorable separation (honorable discharge) or separation under honorable conditions (general discharge) as warranted by the member's military record.
- 1. Separation may be directed when genuine dependency or undue hardship exists, and
 - a. The hardship or dependency is not of a temporary nature;
 - b. Conditions have arisen or have been aggravated to an excessive degree since entry into the Service and the member has made every reasonable effort to remedy situation;
 - c. The separation will eliminate or materially alleviate the condition; and
 - d. There are no means of alleviation readily available other than the separation.
 - 2. Undue hardship does not necessarily exist solely because of altered present or expected income or because the individual is separated from his family or must suffer the inconvenience normally incident to military service.

Dec 29, 76

D. Minority. Release by avoidance of contract or separation with an honorable or a general discharge, as warranted by the member's military record.

1. Release or separation may be directed after determination that:
 - a. There is evidence satisfactory to the discharge authority that the member is under 18 years of age; and
 - b. The member enlisted without the written consent of his/her parent or guardian, if he/she has a parent or guardian entitled to his/her custody and control.
2. Upon application by the parents or guardian of a regular enlisted member of an Armed Force to the discharge authority within 90 days after the member's enlistment, the member shall be discharged for his/her own convenience, with the pay and form of discharge certificate for which his/her service entitles him/her, if 1.a. and b., above, are satisfied.

E. Disability. An honorable discharge or a general discharge, as warranted by the member's military record, when the member has been determined to be physically unfit to perform the duties of his/her office, rank, grade or rating, and is not entitled to retirement under the provisions of 10 USC, Chapter 61 (reference (b)).

F. Personal Abuse of Drugs Other Than Alcoholic Beverages. Discharge with an honorable discharge, when based on evidence developed as a direct or indirect result of a urinalysis test administered for identification of drug abusers, or by a member's volunteering for treatment for a drug problem under the Drug Identification and Treatment Program administered by his/her particular Armed Force, and:

1. Member's record indicates lack of potential for continued military service; or
2. Long-term rehabilitation is determined necessary and member is transferred to a Veterans' Administration or civilian medical facility for rehabilitation; or

Dec 29, 76

3. Member has failed, through inability or refusal, to participate in, cooperate in, or complete a drug abuse treatment and rehabilitation program.

Note: It is essential to assure compliance with both the letter and spirit of the rule of law announced in United States v. Ruiz (23 USCMA 181, 48 CMR 797 (1974)). Extreme care should be exercised to assure that a member identified for separation under this provision is not separated with less than an honorable discharge, based on some separate and distinct reason for discharge, unless it can be clearly demonstrated that evidence of drug use obtained through the identification process described herein was not directly or indirectly utilized in establishing such separate and distinct reason. It may be desirable for Field Commanders to consult with legal personnel concerning implementation of this note.

G. Unsuitability. Separation with an honorable or a general discharge, as warranted by the member's military record, when it has been determined that an individual is unsuitable for further military service because of:

1. Personality Disorder: As determined by medical authority and described in the Diagnostic and Statistical Manual (DSM-11) of Mental Disorders, ¹American Psychiatric Association (reference (h)); which interferes with member's ability to adequately perform duties. Exception: Combat exhaustion and other acute situational maladjustments.
2. Alcohol Abuse. Failure, through inability or refusal to participate in, cooperate in, or complete an alcohol abuse treatment and rehabilitation program.
3. Homosexual or other aberrant sexual tendencies.
4. Unsanitary habits.
5. Financial irresponsibility.

¹Section on mental disorders, International Classification of Diseases and Injuries - 8, Diagnostic and Statistical Manual (DSM-11) of Mental Disorders, 2nd Edition, Committee on Nomenclature & Statistics, American Psychiatric Association, Washington, D.C., 1968.

Dec 29, 76

6. **Apathy, defective attitudes, inability to expend effort constructively. As a significant observable defect elsewhere not readily describable.**
7. **Inaptitude.**
- H. **Security.** Separation, with the character of discharge, and under conditions and procedures stipulated by the Secretary of Defense, as set forth in DoD Directive 5210.9 (reference (c)) and similar Directives applicable to the Coast Guard, when retention is clearly inconsistent with the interest of national security.
- I. **Misconduct.** Separation under other than honorable conditions, unless the particular circumstances in a given case warrant a general or an honorable discharge, when it has been determined that an individual is unqualified for further military service because the member's military record in the current enlistment of period of obligated service evidences one or more of the following patterns of conduct, acts or conditions:
 1. **Frequent involvement of a discreditable nature with civil or military authorities.**
 2. **An established pattern for shirking.**
 3. **An established pattern showing dishonorable failure to pay just debts.**
 4. **An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees or judgments of a civil court concerning support of dependents.**
 5. **Sexual perversion, including but not limited to (1) lewd and lascivious acts, (2) homosexual acts, (3) sodomy, (4) indecent exposure, (5) indecent acts with or assault upon a child, or (6) other indecent acts or offenses.**
 6. **Drug abuse, which is the illegal, wrongful, or improper use, possession, sale, transfer or introduction on a military installation of any narcotic substance, intoxicating inhaled substance, marijuana, or controlled substance, as established by 21 USC 812 (reference (d)), when supported by evidence not attributed to a urinalysis administered for identification of**

Dec 29, 76

1

drug abusers or to a member's volunteering for treatment under the Drug Identification and Treatment Program administered by his/her particular Armed Force.

7. Conviction by civil authorities (foreign or domestic), or action taken which is tantamount to a finding of guilty, of an offense for which the maximum penalty under the Uniform Code of Military Justice (reference (e)) is death or confinement for one year or more; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender, or is placed on probation, or punished in any way, as the result of an offense involving moral turpitude. If the offense is not listed in the Manual for Courts-Martial, 1969 (Rev.), Table of Maximum Punishments, or is not closely related to an offense listed therein, the maximum punishments authorized by U.S. Code or the District of Columbia Code, whichever is lesser, applies.
 8. Procurement of a fraudulent enlistment, induction or period of active service through any deliberate material misrepresentation, omission or concealment which, if known at the time, might have resulted in rejection. The enlistment of a minor with false representation as to age without proper consent will not, in itself, be considered as fraudulent enlistment.
 9. Prolonged unauthorized absence, continuous for one year or more.
- J. Resignation or Request for Discharge for the Good of the Service. Separation under other than honorable conditions is authorized, subject to procedures and safeguards specified elsewhere in this Directive, upon resignation or request for discharge, where conduct has rendered a member triable by court-martial for an offense which is listed in Section A. of the Table of Maximum Punishments, paragraph 127c, Manual for Courts-Martial, 1969 (Rev.), as being punishable by a punitive discharge (the provisions of the Table of Maximum Punishments, Section B., paragraph 127c, Manual for Courts-Martial, 1969 (Rev.), are not applicable to requests for discharge pursuant to this paragraph).

RETENTION OR SEPARATION

In determining whether a member should retain current military status or be administratively separated, the member's entire military record may be evaluated.

- A. Include (1) records of nonjudicial punishment imposed during a prior enlistment or period of service, (2) all records of conviction by court-martial, and (3) any other factors which are material and relevant.
- B. Commanding Officers, investigating officers, administrative discharge boards, and other Agencies charged with making such determinations, shall consider records of nonjudicial punishment imposed during a prior enlistment or period of service only if such records of punishments would have, under the particular circumstances of the case, a direct and strong probative value in determining whether retention or administrative separation is appropriate.
- C. Cases in which the circumstances may warrant use of such records shall ordinarily be limited to those involving patterns of conduct which become manifest only over an extended period of time.
- D. When a record of nonjudicial punishment imposed during a current enlistment or period of service is considered, isolated incidents and events which are remote in time or have no probative value in determining whether retention or administrative separation should be effected, shall have minimal influence on the determination.

Dec 29, 76

CHARACTERIZATION OF SERVICE

A. Guidelines. When separated under the provisions of this Directive, a member shall be provided a certificate reflecting the character of his/her service for the period concerned.

1. Honorable. Predicated upon proper military behavior and proficient performance of duty with due consideration for the member's age, length of service, grade and general aptitude. A member will not necessarily be denied an honorable characterization solely by reason of a specific number of convictions by courts-martial or actions under Article 15 of the Uniform Code of Military Justice (10 USC 815, reference (e)) during his/her current enlistment or period of obligated service. An Honorable Discharge certificate (DD Form 256) shall be provided upon discharge.
2. Under Honorable Conditions. Appropriate when a member's military record is not sufficiently meritorious to warrant an honorable characterization, as prescribed by the regulations of the Service concerned. A General Discharge certificate (DD Form 257) shall be provided upon discharge.
3. Under Other Than Honorable Conditions. Appropriate when a member is separated for (a) misconduct or security, when based on the approval of a recommendation of an administrative discharge board or waiver of the right to board action, or (b) resignation or request for discharge for the good of the Service. A Discharge Under Other Than Honorable Conditions certificate (DD Form 794) shall be provided upon discharge.

Note: Use of DD Form 258 is discontinued effective January 1, 1977, at which time, use of existing DD Forms 794 is prescribed.

B. Special Consideration

1. In any case in which a Discharge Under Other Than Honorable Conditions certificate is authorized under this Directive, a member may receive a more favorable characterization if, during his/her current enlistment or period of obligated service, or any voluntary or involuntary extension thereof, or period of prior service, he/she has been awarded a

Dec 29, 76

personal decoration as defined by his/her Service, or if warranted by the particular circumstances of a specific case.

2. Except as indicated below, the characterization of service of the current enlistment or period of service will be determined solely by the member's military record during that enlistment or period of service, plus any extensions thereof prescribed by law or by the Armed Forces concerned, or effected with the consent of the member. The following shall not be considered:
 - a. Prior service activities, including but not limited to records of conviction by courts-martial, records of non-judicial punishment, records of absence without leave, or commission of other offenses for which punishment was not imposed.
 - b. Preservice activities, excepting misrepresentations, including omission of facts which, if known, would have precluded, postponed or otherwise affected the member's eligibility for enlistment or induction.

RESTRICTION ON CERTAIN ADMINISTRATIVE DISCHARGES

- A. Administrative discharge action under the provisions of paragraphs G.2., 4., 5., 6. and 7., and I. 1., enclosure 2, will not normally be initiated until a member has been counseled concerning his/her deficiencies and afforded a reasonable opportunity to overcome them.
- B. No member shall be separated under other than honorable conditions unless he/she is afforded the right to present his/her case before an administrative discharge board, with the advice and assistance of counsel, and unless such discharge is supported by approved board findings and an approved board recommendation for such a discharge. As exceptions, a discharge under other than honorable conditions may be issued without board action if the member (1) is beyond military control by reason of prolonged unauthorized absence, or (2) resigns or requests discharge for the good of the Service, or (3) waives his/her right to board action.
- C. The discharge authority may approve the service characterization recommended by an administrative discharge board, or a characterization more favorable, but shall not approve a characterization of service less favorable than that recommended.
- D. When an administrative discharge board recommends retention, and the discharge authority believes that separation is warranted, by the circumstances of a particular case, this authority may recommend separation to the Secretary concerned, pursuant to paragraph B. 14., enclosure 2. If separation is approved, an
* Honorable or a General Discharge certificate, as directed by the Secretary concerned, will be issued. *
- E. Notwithstanding a member's written acknowledgment that he/she will be issued a Discharge Under Other Than Honorable Conditions certificate, under the provisions of subsection J., enclosure 2, "Resignation or Request for Discharge for the Good of the Service," the discharge authority may direct issuance of either an Honorable or General Discharge certificate, if warranted.
- F. A member subject to discharge because of conviction by civil court may be processed for discharge although he/she has filed an appeal or stated his/her intention to do so. However, it will be

the general policy to withhold the execution of the approved discharge, pending outcome of the appeal. If the execution of the discharge is considered appropriate without waiting for final action on the appeal, the member may be discharged with the appropriate type of discharge certificate, upon the direction of the Secretary concerned.

- G. No member shall be administratively discharged with a discharge under other than honorable conditions, if the grounds for such discharge action are based wholly or in part upon acts or omissions for which the member has been previously tried by court-martial resulting in acquittal or action having the effect thereof, except when such acquittal or equivalent disposition is based on a legal technicality not going to the merits.
- H. No member shall be subjected to administrative discharge board action based upon conduct which has previously been the subject of administrative discharge board proceedings, when the evidence before the subsequent board would be the same as the evidence before the previous board, except as provided in V. D. 7., of this Directive, and in those cases where the favorable findings of the previous board are determined to have been obtained by fraud or collusion.

Dec 29, 76

PROCEDURES FOR DISCHARGE

The following procedures will be adhered to in effecting administrative discharges:

- A. Consultation with Counsel. Members being processed for involuntary separation under honorable conditions (general discharge) or under other than honorable conditions, shall be provided the opportunity to consult with a judge advocate or law specialist at the outset of the procedure for separation.
- B. Honorable Discharge. A separation with an honorable discharge may be effected by the member's commanding officer or higher authority when the member is eligible for or subject to discharge and it has been determined that the member merits an honorable discharge under prescribed Service standards.
- C. Under Honorable Conditions (General Discharge). A separation under honorable conditions may be effected by the commanding officer or higher authority when the member is eligible for or is subject to discharge and it has been determined, under prescribed Service standards that such discharge is warranted. When a General Discharge certificate is issued for one of the reasons listed in paragraphs A. through E., enclosure 2, the specific basis therefor shall be included in the member's permanent personnel records.
- D. Discharge for Unsuitability. An honorable discharge or a discharge under honorable conditions, based on the standards prescribed in paragraph G., enclosure 2, may be issued by the commander exercising special court-martial jurisdiction or higher authority.
 1. A member with less than eight years of total active and/or reserve military service shall be notified in writing of the proposed discharge action and shall be afforded an opportunity to make a statement in his/her own behalf or decline the opportunity in writing. This correspondence shall be filed in the member's permanent personnel records.
 2. A member with eight or more years of total active and/or reserve military service shall be discharged by reason of

unsuitability only in accordance with the safeguards and procedures specified in paragraphs E. 1. and 2., below.

E. Under Other Than Honorable Conditions. A discharge under other than honorable conditions shall be directed by a commander exercising general court-martial jurisdiction or by higher authority. This authority may be delegated to a general or flag officer in command who has a judge advocate or law specialist on his/her staff for cases arising in that command. Every action taken pursuant to such a delegation shall state the authority therefor. A Discharge Under Other Than Honorable Conditions certificate shall be issued in accordance with the provisions of this Directive which include the following procedures and safeguards:

1. A member who is under military control shall be notified in writing of the basis for the proposed discharge action and advised that he/she has the following rights:
 - a. To present his/her case before an administrative discharge board.
 - b. To be represented by counsel.
 - c. To waive the above rights in writing. The member shall be given an opportunity to consult with counsel, prior to waiving his/her rights.
2. If a member waives his/her rights, the discharge authority may disapprove the waiver and refer the case to an administrative discharge board, or direct retention on active duty, or direct discharge by reason of misconduct or security. If discharge is directed, the type of certificate will be specified.
3. A member unable to appear in person before an administrative discharge board, by reason of confinement by civil authorities, shall be advised (by registered mail or certified mail, return receipt requested) of the proposed discharge action, the type of discharge certificate that may be issued, and the fact that action has been suspended to give him/her the opportunity to exercise the following rights:
 - a. To have his/her case considered by an administrative discharge board.

Dec 29, 76

- b. To request appointment of a military counsel to represent him/her and in his/her absence present his/her case before an administrative discharge board.
 - c. To submit statements in his/her own behalf.
 - d. To waive the foregoing rights, either in writing or by failing to reply to the letter of notification within a prescribed time limit.
4. A member of a Reserve component not on active duty shall be advised (by registered mail or certified mail, return receipt requested and received, indicating delivery) of the proposed discharge action, the type of discharge certificate that may be issued, and the fact that action has been suspended to give him/her the opportunity to exercise the following rights:
- a. To have his/her case considered by an administrative discharge board.
 - b. To request appointment of a military counsel to represent him/her and in his/her absence present his/her case before an administrative discharge board.
 - c. To submit statements in his/her own behalf.
 - d. To waive the foregoing rights, either in writing or by failing to reply to the letter of notification within a prescribed time limit.
5. A member beyond military control by reason of unauthorized absence:
- a. May be discharged under other than honorable conditions in absentia under either of the following circumstances:
 - (1) When the prosecution of the member is apparently barred by statute of limitations, 10 USC 843, (reference (e)). In those cases, a Discharge Under Other Than Honorable Conditions certificate may be issued at any time after it is determined that prosecution is so barred, provided that upon consideration of available extenuating, mitigating and aggravating factors in each case, the discharge

Dec 29, 76

authority determines that the best interest of the Armed Forces will be served by issuance of such discharge.

- (2) When the discharge authority determines, in accordance with regulations of the Department concerned, that issuance of a Discharge Under Other Than Honorable Conditions certificate will serve the national interests.
 - b. Shall be notified of the imminent discharge action and the effective date thereof by registered mail or certified mail, return receipt requested, forwarded to the record address of the member, or next of kin, as appropriate.
 - c. Shall be subject to the separation limitations of 10 USC 1163 (reference (f)), if he/she is a member of a Reserve component.
6. A member who submits a resignation or requests discharge for the good of the Service may be issued a Discharge Under Other Than Honorable Conditions certificate without board action, provided he/she has been afforded the opportunity to consult counsel and certifies in writing that he/she understands (a) he/she will receive a discharge under other than honorable conditions, and (b) the adverse nature of such a characterization and the possible consequences thereof.
- F. Conditional Waiver. Use of a conditional waiver, as described below, is authorized at the discretion of the Military Departments. A "conditional waiver" is a statement initiated by a member waiving those rights associated with administrative discharge board proceedings, contingent upon receiving a characterization of military service higher than the least characterization authorized for issuance for the specific reason of separation in the member's situation. If such a statement of waiver is accepted, the particular circumstances of the member's military service warranting the higher characterization will be specifically identified by the member's commanding officer, or higher authority, in the discharge correspondence to be filed in the member's military personnel record.

Dec 29, 76

SUSPENSION OF EXECUTION OF APPROVED DISCHARGE

The discharge authority or higher authority may, prior to the expiration of the member's enlistment or period of obligated service, suspend execution of an approved discharge for a specified period if the circumstances in a case indicate a reasonable prospect for rehabilitation. During the period of suspension the member shall be afforded an opportunity to demonstrate that he/she is capable of behaving properly for an extended period under varying conditions and that he/she can perform assigned duties efficiently.

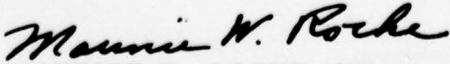
- A. Upon satisfactory completion of the probationary period, execution of the approved discharge will be cancelled automatically.
- B. Additional misconduct on the part of the member during the probationary period of actions which constitute substandard performance of duty or demonstrate characteristics of unsuitability may establish the basis for one of the following actions:
 - 1. Punitive or new administrative action may be initiated, notwithstanding the suspension of execution of the approved discharge.
 - 2. Suspension of the approved discharge may be vacated, and the approved discharge executed, to include discharge in absentia when the member has been beyond the military control for 15 or more days.

Dec 29, 76

REFERENCES

- (b) Title 10, United States Code, Chapter 61, "Retirement or Separation for Physical Disability"
- (c) DoD Directive 5210.9, "Military Personnel Security Program," June 19, 1956
- (d) Title 21, United States Code, 812, "Schedule of Controlled Substances - Establishment"
- (e) Title 10, United States Code, Chapter 47, "Uniform Code of Military Justice"
- (f) Title 10, United States Code, 1163, "Reserve Components - Members; Limitations on Separations"
- (g) Title 10, United States Code, 1552 and 1553, "Correction of Military Records, and Review of Discharges and Dismissals"
- (h) Diagnostic and Statistical Manual (DSM-11) of Mental Disorders, American Psychiatric Association

DEPARTMENT OF DEFENSE DIRECTIVES SYSTEM TRANSMITTAL

NUMBER	DATE	DISTRIBUTION
1332.14 - Ch 1	January 31, 1977	1300
ATTACHMENTS Pages 3&4, 5&6, and pages 1&2 of enclosure 5 to DoD Directive 1332.14, 12/29/76		
INSTRUCTIONS FOR RECIPIENTS The following page changes to Department of Defense Directive 1332.14, "Enlisted Administrative Separations," dated December 29, 1976, have been authorized: <u>PAGE CHANGES</u> 1. Remove: Pages 3&4, 5&6 of basic Directive Insert: Attached replacement pages. Changes appear on pages 3 and 5 and are indicated by marginal asterisks. 2. Remove: Pages 1&2 of enclosure 5 Insert: Attached replacement pages. Changes appear on page 1 and are indicated by marginal asterisks. <u>EFFECTIVE DATE</u> The above changes are effective immediately.		
<div style="text-align: right;"> MAURICE W. ROCHE, Director Correspondence and Directives OASD(Comptroller)</div>		
WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT		

APPENDIX C

Comparison and Summary of Major Legislative Proposals by the 95th Congress Concerning Administrative Discharges

Subject	H.R. 91 (Bennett) 95th Congress	H.R. 2015 (Reid) 95th Congress
I. Scope	<p>Sec. 1175 -</p> <p>No discharge other than an Honorable Discharge, except as under this chapter or certain other parts of U.S. Code</p>	<p>Sec. 1173 -</p> <p>No OTH's for enlisted members except under this chapter or chapter 47 of title 10 (UCMJ)</p>
II. Characterization of Service	<p>Sec. 1174 - Requires issuance of discharge certificate which shows characterization</p> <p>Certificate of discharge may be characterized <u>only</u> as</p> <p>(1) Honorable Discharge</p> <p>(2) Discharge from service - issued only pursuant to Sec. 1183 (Board action; resignation in lieu of trial or Board; AWOL for 1 year; in time of war by order of the President)</p> <p>(3) BCD or DD resulting from <u>general</u> court-martial</p> <p><u>NOTE:</u> Eliminates General Discharge</p> <p>Replaces Undesirable with Discharge from Service</p> <p>Narrative statement of service to be provided member at his request. Statement to include dates of service, characterization of discharge and specific circumstances leading to less than Honorable Discharge.</p>	<p>Requires issuance of discharge certificate</p> <p>Certificate of discharge will <u>not</u> show conditions of separation</p> <p>Character of service (except when as a result of court-martial) may not be released without prior <u>written</u> consent of the member to any Federal, State or local public agency or to any private person</p>

<p>Subject</p> <p>II. Characterization of Service (cont)</p>	<p>NOTE: H.R. 2039 (Downey) and S.1687 (McGovern) would create a new category of discharge issued by DRBs entitled an "honorable discharge (limited)" which would not confer automatic entitlement to VA benefits.</p>
<p>III. Grounds for Separation</p>	<p>Sec. 1183 -</p> <p>1. Board action, based on preponderance of evidence of:</p> <p>(i) misconduct (EM)</p> <p>(ii) misconduct or moral or professional dereliction (officers, cadets, midshipmen)</p> <p>(iii) inconsistent with national security</p> <p>(iv) conviction by civil court (adjudication as juvenile offender) of felony</p> <p>(v) three separate and convictions by civil and/or military courts within three years where maximum punishment for each offense is at least 3 months confinement</p> <p>2. Resignation or request for discharge in lieu of board or court-martial after consultation with Art 27(B) lawyer</p> <p>3. AMOL for 1 year</p>
	<p>1. Same</p> <p>(i) Same</p> <p>(ii) Not present</p> <p>(iii) Same</p> <p>(iv) Same, except board not required</p> <p>(v) Same, except board not required</p> <p>2. Same</p> <p>3. Same</p>

Subject	H.R. 91 (Bennett) 95th Congress	H.R. 2015 (Boiland) 95th Congress
III. Grounds for Separation (cont)	4. In time of war by order of the President	4. Same
IV. Rules of Evidence	Sec. 1184 - Secretary of Defense shall prescribe: - uniform rules providing board and respondent equal opportunity to obtain evidence Board will have subpoena power Secretary of Defense shall prescribe: - uniform rules of evidence - uniform rules on depositions	Secretary concerned shall prescribe: - rules (which shall be uniform for all services) providing board and member equal opportunity to obtain evidence Same Same, except Secretaries concerned shall prescribe the rules which shall be uniform for the services NOTE: Rules of evidence must be reported to Congress.
V. Rights at Hearing	Sec. 1184 - 1. Appear and present evidence 2. Be represented by Art 27(B) counsel— if counsel not available, no discharge from service (i.e., only Honorable Discharge) 3. Confront witnesses	1. Same 2. Same, except no separation under OTH conditions if Art 27(B) counsel not available 3. Same, except subject to exceptions in the rules of evidence

Subject	H.R. 91 (Bennett) 95th Congress	H.R. 2015 (Boland) 95th Congress
V. Rights at Hearing (cont)	<p>4. Examine documents and any real evidence</p> <p>5. Notified of hearing and reasons therefor reasonably in advance</p> <p>6. If in civilian jail, hearing may be conducted in absentia if reasonable effort is made to obtain respondent's presence and if respondent represented by Art 27(B) counsel</p>	<p>4. Same</p> <p>5. Same</p> <p>6. Same, except no requirement to attempt to obtain respondent's presence</p> <p>7. May request at least 1/3 of board be EM</p>
VI. Legal Adviser	<p>Sec. 1182 -</p> <p>Non-voting</p> <p>Must be a certified Art 27(B) counsel</p> <p>Rules on questions of law</p> <p>If legal adviser not available, no discharge from service</p>	<p>Same</p> <p>Must be certified as a Military Judge</p> <p>Interlocutory rulings are final</p> <p>If legal adviser not available, no discharge under OTH conditions</p>
VII. Review of Requests for Discharge in lieu of trial or board	<p>Sec. 1185 -</p> <p>Request for discharge in lieu of trial or board action must be reviewed and approved by a legal adviser</p> <p>SECDEF will prescribe uniform rules</p>	<p>NONE</p>

Subject	H.R. 91 (Bennett) 95th Congress	H.R. 2015 (Boland) 95th Congress
VII. Review of Requests for Discharge in lieu of trial or board (cont)	SECDEF shall, insofar as practicable, apply standards applicable to guilty pleas under UCMJ	No such requirement
VIII. Appeal	Sec. 1186 -	
a. Review Board	<p>Discharges from service may be appealed to Court of Administrative Review set up by JAG</p> <p>3 appellate military judges</p> <p>Determines legal sufficiency and may order rehearing</p> <p>Considers only verbatim record and written arguments</p> <p>Excludes officer cases reviewable under 10 USC 3793 or 10 USC 8793 (review of regular Army and Air Force officer cases) or 14 USC 323 (review of USCG cases)</p>	<p>Same, except does not give court a name</p> <p>3 members certified as military judges</p> <p>Same</p> <p>Same</p> <p>Is applicable to only EM</p>
b. Court of Military Appeals	Sec. 1186(h) -	May recommend mitigation (not increase) of adverse board recommendations
	Discharge from service reviewed by Court of Military Appeals	NONE

Subject

<p>VIII. Appeal</p> <p>b. Court of Military Appeals (cont)</p>	<ul style="list-style-type: none"> - when sent by JAG for review - upon petition from former member (court grants review upon good cause) <p>Former member will be represented by appellate counsel</p> <p>Member has three months from discharge to petition</p> <p>COMA reviews only findings and recommendations approved by discharge authority</p> <p>COMA need review only issues raised by JAG or specified in grant of review</p> <p>COMA shall act only on matters of law</p> <p>When COMA sets aside findings (except where lack of sufficient evidence in record), it may send case to Court of Administrative Review</p> <p>When COMA does not refer to Court of Administrative Review, court shall order Secretary concerned to issue Honorable Discharge</p>	
<p>IX. Verbatim Transcript/Service Record</p>	<p>Sec. 1184(c) -</p> <p>Verbatim record required</p>	<p>Verbatim record only required in cases of appeal</p>

Subject	H.R. 91 (Bennett) 95th Congress	H.R. 2015 (Boland) 95th Congress
IX. Verbatim Transcript/Service Record (cont)	<p>Sec. 1186(j) -</p> <p>Upon appeal to appeal board, Court of Military Appeals, Discharge Review Board or Board for Correction of Military (Naval) Records, must provide upon request</p> <ul style="list-style-type: none"> - verbatim record of discharge proceedings - personnel file 	<p>No such requirement (however, Privacy Act would require production of records mentioned in H.R. 91)</p>
X. "Double Jeopardy"	<p>Sec. 1186(i) -</p> <p>Unless findings of discharge board or court-martial obtained by fraud or collusion,</p> <ul style="list-style-type: none"> - member acquitted at court-martial may not be required to appear before administrative discharge board for conduct which was in whole a part subject of court-martial - member not sentenced to punitive discharge may not be subject to administrative discharge board action solely in connection with conduct that was the subject of a court-martial 	<p>Except where findings or recommendations obtained by fraud or collusion, member may not be required to appear before a second administrative discharge board solely for conduct which was the subject of the previous proceeding</p>

<p>X. "Double Jeopardy" (cont)</p>	<p>- member may not be required to appear at second administrative discharge board solely for the same conduct which was the subject of a prior board where the first board made a finding of no misconduct or the first board recommended retention</p>	
<p>XI. Amendments</p>	<p>No substantive amendments</p>	<p>Amends Sec. 1163 to limit applicability of certain provisions to Reserve officers and to provide that an enlisted Reserve member must be given a discharge under honorable conditions unless separated under Sec. 1173</p>
<p>XII. Effective Date</p>	<p>First day of the sixth month following the month in which enacted</p>	<p>Same</p>

APPENDIX 4

Due Process

I. Procedural Due Process Overview

One may not have a constitutional right to go to Baghdad, but the Government may not prohibit one from going there unless by means consonant with due process of law.¹

The Fifth Amendment of the United States Constitution enjoins the Federal government from depriving any person of "life, liberty, or property, without due process of law." The term "due process", however, has no settled legal meaning. Due process in the primary sense is fairness of procedures. It is the embodiment of notions of "just treatment" which have evolved through centuries of Anglo-American constitutional history and civilization.²

Procedural guarantees are not absolute; they vary according to the nature of the adjudication -- criminal, civil, or administrative -- the right adjudicated, and the factual context. See, e.g., Willner v. Committee on Character, 373 U.S. 96 (1963) (Goldberg, J. concurring); Japanese Immigrant Cases, 189 U.S. 86 (1903). As noted by the Supreme Court in Cafeteria Workers v. McElroy, 367 U.S. 886, 6 L.Ed 2d 1230 (1961):

¹ Homer v. Richmond, 292 F.2d 719 as quoted in Cafeteria Workers v. McElroy, *infra*.

² Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 95 L.Ed. 817 (1950) (Frankfurter concurring).

The Fifth Amendment does not require a trial-type hearing in every conceivable case of governmental impairment of private interest. "For, though 'due process of law' generally implies and includes actor, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings, . . . yet, this is not universally true" [citations omitted]. The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation" [citations omitted]. "[D]ue process", unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." It is "compounded of history, reason, the past course of decisions"

Present constitutional doctrine mandates a bifurcated inquiry to determine if the Due Process Clause is violated by challenged governmental action. First, the nature of the threatened interest must be characterized, and second if that interest is of a nature deserving due process protection, the form of that protection must be shaped. Thus a court must search initially for a threshold interest sufficient to come within the Fifth Amendment conceptions of "life, liberty or property." If such an interest is indicated, the requisite form of protection is derived from a balancing analysis, wherein the individual's need for requested procedural safeguards is weighed against the governmental interest in not affording the requested procedural component.³ Three factors figure most prominently in the weighing calculation which the courts have used

³ See, Cafeteria Workers, supra, p. 367 U.S. at 895.

to specify the procedures required by due process: (1) the severity of the loss which the individual suffers as a result of the governmental deprivation of a protected interest; (2) the weight of the governmental interest justifying summary or informal action; and (3) the functional appropriateness of the requested procedures for resolving the particular type of dispute in question.⁴

An understanding of the historic development of procedural due process is essential to the proper appreciation of current doctrine and the precedential validity of dated decisions. Within a relevant time frame -- e.g., 1950 to the present -- due process in the administrative aspect has undergone three phases of development. The first phase of administrative due process development coincided with the domestic anti-communist movement in the late 1950's. People and organizations were branded communist on the basis of suspect evidence and subjected to severe disabilities with no opportunity to contest the governmental labeling. In this period, courts were not overly concerned with rigorously identifying specific interests which qualify for constitutional protection, but rather wanted to impose some form of restraint, some form of public and deliberative procedures to stem the tide of abuses perpetrated in the name of national security. Thus, the key analytic limitation

⁴ See, Note, Specifying the Procedures Required by Due Process: Toward Limits on the Use of Interest Balancing. 88 Harv. L. Rev. 1510 (1975).

on the sweep of the Due Process Clause came from the balancing procedure, where, depending on the specific factual circumstances, the Fifth Amendment could be found to demand a full trial-type hearing or could tolerate naked summary action.⁵

The second phase of administrative procedural due process development was initiated by the Warren Court during its years of judicial activism. The Warren Court continued the trend of according Fifth Amendment protection to any interest that had a conceivable nexus with "liberty" or "property." In addition, the Court began articulating certain minimum procedural safeguards which, even in the balance, could not be disregarded regardless of the time, place, or circumstances of the impinging government action.⁶ Two safeguards emerged as immutable, the right to notice and the opportunity to be heard before the government action is final. The balancing test was retained to identify the timing of the hearing -- whether it must

⁵ Compare the dicta in Green v. McElroy, 360 U.S. 474, 3 L.Ed. 2d 1377 (1959) with the holding in Cafeteria Workers, supra.

⁶ See generally, Goldberg v. Kelly, 397 U.S. 254, 25 L.Ed. 2d 287 (1970). Bell v. Burson, 402 U.S. 535, 29 L.Ed. 2d 90 (1971). Fuentes v. Shevin, 407 U.S. 67, 32 L.Ed. 2d 556 (1972), Sniadach v. Family Finance Corporation, 395 U.S. 337, 23 L.Ed. 2d 349 (1969).

precede the adverse action -- and the nature of the hearing -- whether it could be informal or whether it had to be in the nature of a criminal trial type proceeding -- but it was no longer used to determine if a hearing was required.

The third phase of administrative due process development was occasioned by the advent of the Nixon Court and is still in an evolutionary stage. As in other areas, the decisions of the Court are currently limiting the extent and incidents of judicial intervention in government action. In the procedural due process area the decisions of the Court are limiting the number of interests which will qualify as coming within the ambit of the Fifth Amendment. Rather than a conceivable nexus with a protected area, claimants now must show affirmatively that the threatened government action will affect an interest which is squarely within the recently articulated definition of "liberty" and "property."⁷ When the Due Process Clause is found to be applicable the present Court has not disturbed the notion that due process, at a minimum, requires notice and a hearing, but it has cut back on the trend requiring that the hearing precede the governmental action and has limited the number of procedural elements which must accompany the hearing.

⁷ See, Board of Regents v. Roth, 408 U.S. 564, 33 L.Ed. 2d 548 (1972).

II. Fifth Amendment Applicability

Until recently, the application of the Due Process Clause to any adverse governmental action was assumed. Courts did not engage in any form of rigorous analysis to determine if the interest for which protection was sought was within the Fifth Amendment's contemplation of "life, liberty, or property." Threatened interests were regularly recognized as liberty or property interests by courts as a vehicle for extensive judicial intervention.

While the sweep of potentially protectable interests is still broad, the Supreme Court has recently begun to redefine and reemphasize the initial step of due process analysis, that of determining the applicability of constitution protection to the interest at issue. In Board of Regents v. Roth, 408 U.S. 564, 33 L.Ed. 2d 548 (1972) the Supreme Court moved to require a more disciplined consideration of whether the Due Process Clause was applicable and articulated some limitations on the nature of interests which qualify as constitutionally recognizable liberty or property interests. The case involved a non-tenured assistant professor employed at Wisconsin State University on a one year contract. At the termination of the contract period the university chose not to rehire the individual. No reasons were given for this decision nor was the teacher given an opportunity to present facts supporting

his desire to be rehired or to rebutt the evidence on which the decision not to renew his contract was based. The teacher alleged this summary procedure denied him his Fifth Amendment due process right. The Supreme Court disagreed, finding that the due process clause was inapplicable.

Justice Stewart, speaking for the Court, initially observed that the requirements of procedural due process apply only to the deprivation of interest encompassed by the Fifth Amendment's protection of liberty and property, noting that "the range of interests protected by procedural due process is not infinite."⁸ Justice Stewart began the decision by exploring whether a liberty interest was implicated in the respondents' nonretention. While conceding that liberty denotes more than merely freedom from bodily restraint⁹, in this instance a liberty interest

⁸ 408 U.S. at 570.

⁹ Within the constitutionally recognized notions of liberty the Court cited the following:

"... the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictate of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men. Meyer v. Nebraska, 262 U.S. 390, 399" 408 U.S. at 572.

was not involved. The Court recognized two instances in which the termination of an employment relationship could impair a liberty interest. The first would be when an individual is discharged for reasons which would adversely affect his interest in his "good name, reputation, honor, or integrity."¹⁰ But in the Roth situation, the Court found that:

The State, in declining to rehire the respondent, did not make any charge against him that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge for example, that he had been guilty of dishonesty or immorality. Had it done so this would be a different case.

¹⁰ In so noting, the Court cited Wisconsin v. Constantineau, 400 U.S. 433, 27 L.Ed 2d 515 (1971) a case involving a state statute which allowed the police, without notice or hearing, to post, in all retail liquor outlets, a notice forbidding the sale or gift of liquor to the named individuals. In voiding the statute, the Court held that:

"Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and the opportunity to be heard are essential."

¹¹ 408 U.S. at 572.

The second potential liberty interest the Court associated with an employment relationship was the interest in not being so stigmatized by the grounds for the termination of the first relationship as to greatly increase the difficulty in securing subsequent employment.¹² This interest was not at issue under the Roth facts. The Court noted that:

There is no suggestion that the State, in declining to re-employ the respondent, imposed on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities.¹³

Moreover, the Court clarified that an abstract showing of potential adverse effect on career possibilities was insufficient to qualify under this branch of liberty interest. The District Court had held that non-retention per se stigmatized as to foreclose employment opportunities and the Court of Appeals affirmed on the premise that the respondent's non-retention had a substantial adverse effect on his career interest. The Court, in reversing, stated that:

¹² The notion of employment chilling stigma was born of the "Red Peril" era when the label of "communist" occasioned a severe diminution of job opportunities. See e.g., Joint Anti-Facist Refugee Committee v. McGrath, supra, Cafeteria Workers, supra, and Green v. McElroy, supra.

¹³ 408 U.S. at 573.

Mere proof, for example, that his record of nonretention in one job, taken alone, might make him somewhat less attractive to some other employers would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of "liberty."¹⁴

Noting that an individual could have a property interest in his employment, Justice Stewart explored the criteria which would bring such an interest within the ambit of the Fifth Amendment's concept of property. To have a protected property interest in any benefit, the Court observed that:

A person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead have a legitimate claim of entitlement to it.

* * *

Property interests, of course are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law - rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.¹⁵

In Roth, the Court found the respondent, a non-tenured teacher on a one year contract, had "absolutely no interest in re-employment", and thus could not support any manner of claim of entitlement which would trigger the due process protection of property.

¹⁴ 408 U.S. at 574, Footnote 13.

¹⁵ 408 U.S. at 572.

The result of Roth has been to require a litigant seeking due process protection to prove, at the threshold, an interest which is within the contemplation of the Fifth Amendment. With respect to liberty interest, there are two routes to make the required showing: (1) to make the basically subjective showing of injured reputation and standing in the estimation of the community; or (2) to make an objective showing of diminution of employment possibilities -- requiring proof of concrete economic injury.¹⁶ With respect to a property interest, the litigant must prove an entitlement created by a specific statutory provision, a contractual right, or by an implied contract.¹⁷

The courts have found it particularly difficult to reach agreement on what constitutes injury to reputation. The circuits have ranged widely as to what reasons for

¹⁶ See, Note: The Due Process Rights of Public Employees, 50 N.Y.U. L.Rev. 310 (1975).

¹⁷ See Perry v. Sinderman, 408 U.S. 593 (1972), a companion case to Roth, where the Court held that a nontenured teacher, employed for ten years, had acquired a quasi contractual right to continued employment because the school district did not have a formal tenure system but fostered an understanding that employment for more than seven years amounted to a near tenure status.

employment termination offends an employee's liberty interest in his reputation. Courts have held that terminations based upon any of the following charges do not amount to a deprivation of liberty: malfeasances, Adams v. Walker, 492 F.2d 100 (7th Cir., 1973), noncooperation, Irby v. McGowan, 380 F.Supp. 1024 (S.D. Ala. 1974), display of an "anti-establishment obsession", Lipp v. Board of Education, 470 F.2d 802 (7th Cir., 1972), failure to perform a particular job, Russell v. Hodges, 470 F.2d 212 (2nd Cir. 1972), failure to meet certain minimum standard requirements, Jenkins v. United States Post Office, supra, or failure to coordinate with fellow workers. Shirck v. Thomas, 486 F.2d 691 (7th Cir., 1975). Courts have found the following charges to be stigmatizing: alleged racism, Wellner v. Minnesota State Junior College Board, 487 F.2d 153 (8th Cir., 1973), excessive prescription of drugs, Suarez v. Weaver, 484 F.2d 678 (7th Cir., 1973), dishonesty and lack of integrity, McNeill v. Butz, 480 F.2d 314, (4th Cir., 1973); Hostrop v. Board of Junior College District No. 515, 471 F.2d 488 (7th Cir. 1972); alleged mental instability, Stewart v. Pearce, 484 F.2d 1031 (9th Cir., 1973); unwillingness to carry out institutional policy, Wilderman v. Nelson, 467 F.2d 1173 (8th Cir., 1972); moral turpitude, Abeyta v. Town of Taos, 499 F.2d 323 (10th Cir., 1974); suicidal tendency, Velger v. Cawley, 525 F.2d 334 (2nd Cir., 1975).

e Supreme Court's action in the wake of Roth has
ward further limiting the type of injury to reputa-
that warrants constitutional protection. In Roth,
Court hinted that social stigma could only emanate
an employment termination explained by reasons.¹⁸ In
Shop v. Wood, 426 U.S. 341, 48 L.Ed 2d 684 (1976) the
Court expanded on this notion. The case involved a
policeman who was discharged without a hearing or a formal
statement of the reasons. Privately, he had been informed
that he was being fired for causing low morale on the
police force and for conduct unsuited to an officer. The
Court held that as a matter of law, there can be no social
stigma or dilution of employment possibilities when there
is no public disclosure of the reasons for the government
action.¹⁹

¹⁸ 408 U.S. at 572.

¹⁹ See also, Jenkins v. U.S. Post Office, 475 F.2d 1257 (9th Cir., 1973) where the court held that the liberty interest of a discharged post office employee had not been jeopardized since the reasons for the dismissal had not been publicly disclosed. And Sims v. Fox, 505 F.2d 851 (5th Cir., 1974), where the Court held that an officer, discharged from the Air Force for sexual perversion, did not have a protected liberty interest impinged since the reasons for the discharge did not appear on the face of the discharge certificate. C.f. Cafeteria Workers, supra.

The Supreme Court's action in the wake of Roth has been toward further limiting the type of injury to reputation that warrants constitutional protection. In Roth, the Court hinted that social stigma could only emanate from an employment termination explained by reasons.¹⁸ In Bishop v. Wood, 426 U.S. 341, 48 L.Ed 2d 684 (1976) the Court expanded on this notion. The case involved a policeman who was discharged without a hearing or a formal statement of the reasons. Privately, he had been informed that he was being fired for causing low morale on the police force and for conduct unsuited to an officer. The Court held that as a matter of law, there can be no social stigma or dilution of employment possibilities when there is no public disclosure of the reasons for the government action.¹⁹

¹⁸ 408 U.S. at 572.

¹⁹ See also, Jenkins v. U.S. Post Office, 475 F.2d 1257 (9th Cir., 1973) where the court held that the liberty interest of a discharged post office employee had not been jeopardized since the reasons for the dismissal had not been publicly disclosed. And Sims v. Fox, 505 F.2d 851 (5th Cir., 1974), where the Court held that an officer, discharged from the Air Force for sexual perversion, did not have a protected liberty interest impinged since the reasons for the discharge did not appear on the face of the discharge certificate. c.f. Cafeteria Workers, supra.

In Paul v. Davis, 424 U.S. 693, 47 L.Ed. 2d 405 (1976) the Court considered the appeal of an individual who had been arrested for shoplifting and, even though the charges had been dismissed, the police continued to circulate to local merchants his name and picture on a flyer entitled "active shoplifters." He alleged that the circulation of the flyer injured his reputation and standing in the community and the police procedures for its circulation afforded him no opportunity to clear his name. The Court held that a constitutionally protected liberty interest was not involved. Justice Rehnquist, speaking for the Court, stated that injury to reputation when coupled with a tangible, adverse state action, such as the termination of employment, may invoke constitutional safeguards, but injury to reputation alone does not qualify as a liberty interest.

The Supreme Court has also moved to narrow the nature of property interests which can claim due process protection. In Arnett v. Kennedy, 416 U.S. 134, 40 L.Ed. 152d (1974), a non-probationary federal employee was fired. Pursuant to statute, he was given prior written notice of the discharge proceedings and the opportunity to file a written rebuttal but was not provided a pretermination trial-type

hearing but rather a post-termination evidentiary hearing. The lower courts held that the appellees discharge denied him due process of law because it failed to provide for a trial-type hearing prior to his removal. In a plurality opinion, written by Justice Rehnquist and joined by Chief Justice Burger and Justice Stewart, the Court held that where a litigant claims a property right by virtue of a statutory grant -- discharge only for cause -- he may not simultaneously attack the constitutionality of the statute's procedural safeguards -- a post-termination hearing. As Justice Rehnquist succinctly stated:

Where the grant of a substantive right is inextricably intertwined with the limitations on the procedures which are to be employed in determining that right, a litigant in the position of the appellee must take the bitter with the sweet.

Of course, there is no statutory right or procedure with regard to security access, hence the plurality opinion is not directly applicable to the matter at hand; however, the concurring opinions are enlightening as to the view of a majority of the Court on when a property interest in Government employment is created by statute. Justice Powell,

20 416 U.S. at 153, 154.

in a concurring opinion joined by Justice Blackman, rejected the Court's statutory argument, finding that the statutory requirement of discharges only for cause is sufficient to create a property interest in government employment. In the balance, however, he found the Government interest in maintaining employee efficiency and discipline outweighs the employee's countervailing interest in the continuation of his public employment pending an evidentiary hearing. The dissenters, Justices Marshall, Brennan, and Douglas, accepted Justice Powell's analysis but disagreed with the results of his balancing of the competing interests.

Whereas the Nixon Court appears to be limiting access to the judiciary to redress summary employment termination, the Court continues to recognize constitutionally protected interests in other circumstances. In Wolff v. McDonnell, 418 U.S. 539, 41 L.Ed. 2d 935 (1974), the Court recognized a liberty interest in prisoner's good time credits. In Goss v. Lopez, 419 U.S. 565, 42 L.Ed. 2d 725 (1975) the Court recognized a property interest in high school students' entitlement to an education. In Bell v. Burson, 402 U.S. 535, 29 L.Ed. 2d 90 (1971) the Court recognized a property interest in an individual's drivers license. In Fuentes v. Shevin, 407 U.S. 67, 32 L.Ed. 2d 556 (1972) the Court

recognized a property interest in goods subject to replevin under a security agreement. And in Morrissey v. Brewer, 408 U.S. 471, 33 L.Ed 2d 484 (1972) the Court recognized a liberty interest in the freedom of a parolee.

III. The Form of Due Process

The Constitutional requirement for procedural due process is not a euphemism for a simple list of mechanical elements automatically required whenever the Fifth Amendment is found to apply. Rather, the mix of procedural elements which will comport with due process emerges from a balancing test in which the individual's need for requested procedural safeguards is weighed against the government's interest in summary or informal action. Litigants pursuing a due process claim may demand any of the usual components of a trial-type hearing including, inter alia, prior notice of impending governmental action, oral or written submission before the deciding agency, cross examination of adverse witnesses, an impartial tribunal, representation by counsel, a record of the proceedings, a reasoned decision, and the opportunity to appeal.²¹

²¹ See generally, Goldberg v. Kelly, supra, 397 U.S. at 266-271, In Re Gault 387 U.S. 1, L.ed 2d 527 (1967).

A critical factor in the balancing procedure is the nature of the action involved, whether it is a criminal, civil, or administrative proceeding; safeguards deemed essential in a court of law may be an exceptional occurrence in the administrative setting. Mr. Justice Frankfurter noted that the differences in the origin and function of administrative agencies "preclude wholesale transplanation of the rule of procedure, trial and review which have evolved from the history and experience of courts."²² Hence, the "ultimate balance involves a determination as to when, under our constitutional system, judicial type procedures must be imposed upon administrative action to assure fairness."²³ Specifically, the court observed that:

[R]esolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected [citations omitted]. More precisely, our prior decisions indicate identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any,

22 Federal Communication Commission v. Pottsville Broadcasting Co., 309 U.S. 134, 143, 85 L. Ed 656 (1940)

23 Mathews v. Eldridge, 424 U.S. 319, 348, 47 L.Ed. 2d 18 (1976).

of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.²⁴

Two elements of procedural due process have emerged as minimal due process rights regardless of the type of proceeding: notice and hearing. The Supreme Court "has consistently made plain that adequate and timely notice is the fulcrum of due process, whatever the purposes of the proceeding."²⁵ Due process notice has a dual aspect: (1) it must announce and give fair warning of what constitutes prescribed conduct and (2) it informs an individual that the government suspects he has transgressed its rules.

For the government to act against a citizen there must be a rule which forbids the questioned act and that rule must be sufficiently public or discoverable that a reasonable man would be warned that contemplated conduct is either illegal or in violation of agency rules or regulations. It is axiomatic that the government can not create rules after the fact. Nor can it punish people for violating secret laws. For a criminal statute, there is a constitutional requirement that the law be sufficiently definite and public

24 Id., 424 U.S. at 334-335.

25 In Re Gault, 387 U.S. 1, 72, 18 L. Ed 2nd 527 (1967).

that it gives a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. United States v. Harris 347 U.S. 612, 98 L. Ed 989. Although not required of the same precision, administrative standards must give fair warning of prescribed conduct to meet due process requirements. See Doe v. C.A.B., 356 F. 2d 699 (10th Cir. 1966).

The second aspect of notice is that the individual be informed of what he is suspected of, on what evidence these suspicions are based, what is going to happen as a result, and what he can do about it. For the purposes of criminal proceedings, notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must "set forth the alleged misconduct with particularity."²⁶ Administrative agencies, however, are not obligated to proceed with the technical accuracy necessary to charge a defendant in a court of law. Earnshaw v. United States, 146 U.S. 60, 36 L. Ed. 887 (1892); Woodburg v. McKinnon, 447 F.2d 839 (5th Cir., 1971). The right to a fair hearing in an administrative proceeding embraces "a reasonable opportunity to know the

²⁶ In Re Gault, *supra*, 387 U.S. at 32. See e.g. Cole v. Arkansas 333 U.S. 196 (1948). For application in a civil context, see, e.g., Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950).

claims of the opposing party", Morgan v. United States, 304 U.S. 1, 18, 82 L. Ed. 1129 (1938), and the opportunity to know of adverse evidence Cherneckoff v. United States, 219 F. 2d 721 (9th Cir. 1955). As a general rule, notice regarding administrative action is sufficient when it enables an affected party to prepare an informed response which places all relevant data before the decision maker. Federal Trade Commission v. National Lead Co., 352 U.S. 419, 1 L. Ed. 2d 438 (1957); Golden Grain Macaroni v. Federal Trade Commission 472 F.2d 882 (9th Cir., 1972) cert. denied 412 U.S. 918 (1972).²⁷ The notice should also inform the individual of the procedural format which will be followed and state the substantive criteria which will govern the ultimate determination. See Raper v. Lucey, 488 F.2d 748 (1st Cir. 1973).

The Supreme Court has recently said of the right to a hearing:

Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require the deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for a hearing appropriate to the nature of the case . . . " [T]he fundamental requisite of due process of law is the opportunity to be heard" Grannis v. Ordean, 234 U.S. 2385, 58 L. Ed. 1363 (1944)²⁸

²⁷ For agencies required to adhere to the Administrative Procedure Act, persons entitled to notice of an agency hearing must be informed of the matters of fact and law asserted. 5 U.S.C. §554(b)(3).

²⁸ Goss v. Lopez, supra, 415 U.S. at 574.

And as Justice Frankfurter, in his famous concurring opinion in the Anti-Fascist Refue Comm. v. McGrath, noted:

The Government may not disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity at some time to be heard. 341 U.S. at 161.

Moreover, the Court has indicated that the required hearing must be a real one, not a sham or a pretense, Palko v. Connecticut, 302 U.S. 319, 327, and must come "at a meaningful time and in a meaningful manner", Armstrong v. Manzo, 380 U.S. 545, 552, 14 L. Ed. 2d 62, Mathews v. Eldridge, supra.

What is a meaningful and real hearing is a matter to be resolved in the balancing test. In Goldberg v. Kelly, supra, the court held that, in view of the severity of the loss of welfare benefits, only a full evidentiary, trial-type hearing would comport with due process, while in Goss v. Lopez, supra, the Court held that an informal discussion would be sufficient to suspend a student from school. Indeed, there are cases in which courts, including the Supreme Court, have held the potential injury warranted no hearing whatsoever.²⁹ These cases, however, may be considered in the distinct minority.

²⁹ See Cafeteria Workers, supra, Drown v. Portsmouth School Dist. 435 F.2d 1182 (1st Cir. 1970) cert denied, 402 U.S.

The following comprise the menu of procedural safeguards an individual may request as part of a hearing. Whether the individual has a constitutional right to any or all of them is determined in the balancing test.

A. Timing

The timing of the hearing, whether it must proceed or may follow government action, has been the center of judicial controversy. Early due process analysis uniformly held that the timing of the hearing was not essential as long as the individual had an opportunity to be heard before the action was final. However, from the Goldberg decision arose a strong line of cases which suggested that if a prior evidentiary hearing was not a constitutional minimum it was certainly close to it. Goldberg v. Kelly, 397 U.S. 254, required an evidentiary hearing before the termination of welfare benefits. In Goss v. Lopez, supra, the Court held that high school students could not be suspended without a prior hearing. In Fuentes v. Sherwin, supra, it was held that a hearing was required before one could have his property seized under a writ of replevin. In Bell v. Burson, supra, the Court held that due process required a procedure for

972 (1971); Pfizer v. Richardson, 434 F. 2d 536 (2nd Cir. 1970) (court held that there was no need to accord a trial-type hearing unless the affected party shows in advance that there is something substantial to hear); FCC v. UJR, 337 U.S. 265 93 L. Ed 1353; Swift v. Ciccone, 472 F.2d 577 (8th Cir. 1972).

determining whether there was a reasonable possibility of a judgment against a driver as a result of an accident before his license and vehicle registration could be suspended. In Sniadach v. Family Finance, supra, a Wisconsin statute providing for prejudgment garnishment without notice to the debtor or prior hearing was struck down as violative of the principles of due process. And in Morrissey v. Brewer, supra, the Court determined that the constitution required a prior hearing before parole could be revoked.

The Nixon Court, at least in the area of employment terminations, has halted this move toward prior hearings. In Arnett v. Kennedy, supra, the Court held the Civil Service statutes providing for a post-termination hearing were constitutionally valid even though an individual could be forced to remain unemployed for up to three months awaiting this hearing. From the approach this Court has taken with respect to other aspects of procedural due process, this move may reasonably be viewed as the beginning of a trend toward relaxing the requirement of a prior hearing.

B. Open Proceedings

In the absence of countervailing factors, an adjudicatory hearing must be open to the public and press if the individual so requests. Courts have held that the guarantee of the Sixth Amendment to a "public trial", while

inapposite to a non-criminal proceeding, represents an Anglo-American notion of fairness and hence is a proper element of procedural due process under the Fifth Amendment. That this right is applicable to administrative proceedings was made clear in Fitzgerald v. Hampton, 467 F.2d 755 (D.C. Cir. 1972). In that case Mr. Fitzgerald requested his Civil Service Commission hearing be open to the press and public. The Commission steadfastly declined his request, citing an agency regulation which provided that personnel hearings be closed. In defense of an action to enjoin the closed hearings, the Government raised the following interests as supporting a closed hearing: the privacy interest of the individual; its need for uncomplicated and simple proceedings; the belief that the informal atmosphere of the closed hearing enhances the fairness of the proceedings; and that the hearing examiners lacked the contempt power of judges and thus would have less ability and experience in regulating the decorum at the hearing. The district court disagreed, finding instead weighty considerations favoring open hearings. The appellate court upheld the decision, holding that the government failed to advance reasons against an open proceeding weighty enough to overcome the strong preference for government in the open and the notion that an "open or public hearing" is a fundamental principle of fair play inherent in our judicial process.

While there are few cases on this point, it appears an individual's request for an open hearing at an adjudication must be honored unless the government can advance concrete reasons for a closed hearing beyond administrative convenience and a desire to proceed in private.

Although an individual has a Fifth Amendment right to an open hearing, that right runs to him alone. It is clear that the press or public could not prevail on a Fifth Amendment request that a hearing be open. The press lacks the standing to assert this right and the government has a legitimate interest in protecting the individual's privacy. It is possible that the press may assert an independent First Amendment requirement that administrative hearings be conducted in public, but I am aware of no case in which this argument has been advanced.

C. Counsel

Litigants seeking a due process claim to the right to representation by counsel as a necessary concomitant to a hearing cite Powell v. Alabama, 287 U.S. 45, 77 L.Ed. 158 (1932):

What, then, does a hearing include? Historically and in particular, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right.

*

*

*

If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense. 287 U.S. at 69. [Emphasis added].

But Powell was a criminal case heard before a court of law. Courts have held that "the right to representation by counsel is not an essential ingredient to a fair hearing in all types of proceedings." Madera v. Board of Education, 386 F.2d 778 (2nd Cir., 1967). For example, due process is not denied because a person is refused the right to be represented by counsel in a hearing before a draft board. United States v. Sturgis, 342 F.2d 328 (3d Cir. 1965); Cassidy v. United States, 428 F.2d 585 (8th Cir., 1970); United States v. Evans, 425 F.2d 302 (9th Cir., 1970). Also, the Due Process Clause does not require that the assistance of counsel be permitted the accused in a summary courtmartial proceeding even though the individual could be sentenced to a period of confinement. Middendorf v. Henry, 425 U.S. 25, 47 L. Ed 2. 556 (1975).

It is particularly well established that there is no constitutional right to counsel at the preliminary/ investigatory stages of an administrative proceeding.³⁰ In

³⁰ See generally, Low Wah Suey v. Backus, 225 U.S. 460, 56 L. Ed. 1165 (1912); Nason v. In 370 F.2d 865 (2nd Cir.

In re Groban, 352 U.S. 330, 11 L.Ed. 2d 376 (1957), the Supreme Court held that a person had no constitutional right to be assisted by retained counsel in giving testimony at an investigatory proceeding conducted by a Fire Marshal. There the Court stated:

It is clear that a defendant in a criminal trial has an unqualified right, under the Due Process Clause, to be heard through his own counsel. Chandler v. Fretag, 384 U.S. 3. Prosecution of an individual differs widely from administrative investigation of incidents damaging to the economy or dangerous to the public. The proceeding before the Fire Marshal was not a criminal trial, nor was it an administrative proceeding that would in any way adjudicate appellants' responsibilities for the fire. It was a proceeding solely to elicit facts relating to the causes and circumstances of the fire. 352 U.S. at 332.³¹

The holding is of particular significance because, after the hearing, the Fire Marshal was empowered to arrest any witness if he believed that there was evidence sufficient to charge him with arson or a similar crime (352 U.S. at 338, dissenting opinion). The holding of Groban would seem

1967); People v. Skinner, 341 N.Y.S. 2d 775 (S.C. N.Y. 1973); Finance Commission of Boston v. Mayor of Boston, 351 N.E. 2d 517 (Mass. 1976); Haines v. Askew, 368 F. Supp 369, (Fla. 1973) aff. 417 U.S. 901.

³¹ With regard to the line of demarcation between administrative, investigative and adjudicatory functions, the court in Haines, supra, noted:

The purpose of an investigatory hearing is to discover and procure evidence, not to

even more compelling when there is little or no possible exposure to criminal liability at the conclusion of the administrative investigative phase. The holding in Groban was followed in Anonymous v. Baker 360 U.S. 287, 3 L. Ed 2d 1234 (1954), where the Court held that a witness was not entitled to have a lawyer present at a preliminary interrogation by the Immigration and Naturalization Service even where the witness might become the object of a deportation proceeding.

Although there is a strong preference that counsel be permitted to attend an agency adjudication which affects individual rights, the right to be represented by counsel is a matter to be determined in the balancing test. The factors which weigh most heavily in the balance are the complexity of the proceedings and the competency of the individual. Where the matter at issue is relatively complex and the individual is uneducated and inarticulate, counsel will be required. See generally, Goldberg v. Kelly. Contrawise, when the matters in dispute are fairly straightforward and the individual is reasonably articulate and well educated, assistance of counsel is less pressing.

prove a pending charge. In contrast, an adjudication hearing tests such evidence upon a record in an adversary proceeding before an independent hearing examiner.

D. Presentation of Evidence

The right to a hearing is, in fact, the right to be heard. The right to be heard at least embraces an individual's right to present oral and written submissions before the decisionmaker. See e.g. Morgan v. United States, 304 U.S. 1, 82 L. Ed 1129 (1937). A blanket failure to permit an individual to introduce evidence or otherwise to make an effective defense would constitute a denial of due process. Paskaly v. Seale, 506 F.2d 1209 (9th Cir. 1974). The extent to which the individual may introduce evidence depends on what will be fair in the circumstances and reasonable in light of the purpose and setting of the proceeding. See e.g. Wolff v. McDonald, supra. It is clear that if an individual is accorded a hearing he may present oral testimony. It is not as clear whether the individual may call witnesses on his behalf. The resolution of this question turns most significantly on the issue of the proceeding and the presentation of the government. The strongest case for permitting the individual to call witnesses in his behalf would be if his reputation was at issue and the government presented witnesses to cast aspersion on his character.

E. Confrontation and Cross Examination

A litigant pursuing a request for the right to confront and cross examine the people who have provided

adverse evidence to the government is likely to cite Green
v. McElroy, supra, in support.

Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. . . . We have formalized these protections in the requirement of confrontation and cross examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right "to be confronted with the witnesses against him." This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, [citations omitted], but also in all types of cases where administrative and regulatory actions were under scrutiny. [citations omitted] 360 U.S. at 496, 497.

The decision in Greene is particularly relevant to the present inquiry since it involved the revocation of an aeronautical engineer's security clearance. The clearance had been revoked because there were indications that between 1943 and 1947 he had associated with communists, visited officials of the Russian Embassy, and attended a dinner given by an alleged communist front organization. Procedurally, he was given notice of the action, a statement of the reasons for the revocation, and an opportunity to appear before a review board. He was not, however, allowed to confront or

cross-examine those who furnished adverse information to the government investigators or the investigators themselves. Technically, the Supreme Court's decision in this case -- voiding the revocation -- was based on the narrow grounds that the Department of Defense lacked the authority to create an industrial security program. The Court, however, launched into extended obiter dicta regarding the major deficiency of the unauthorized program -- the systematic denial of the rights to confrontation and cross-examination. Although the Court in Greene did not hold that the denial of the rights to confrontation and cross-examination was unconstitutional, the Court's dicta is often cited in support of these procedural safeguards.

The right to confrontation and cross-examination should be provided unless the government can advance a legitimate concern about allowing the free exercise of the right. See International Harvester Co. v. Ruckelshaus, 478 F.2d 615 (D.C. Cir. 1973). However, cross-examination is not an indispensable part of every hearing. In Morrissey v. Brewer, 408 U.S. 471, 33 L. Ed. d 484, (1972), a case involving the due process elements necessary to revoke parole, the Court noted:

On request of the parolee, persons who have given adverse information on which parole revocation is to be based are to be made available for questioning in his presence. However, if the hearing officer determines

that the informant would be subject to risk of harm if his identity were disclosed, he need not be subjected to confrontation and cross-examination.

Similarly, in Wolff v. McDonnell, supra, the Court held that in a disciplinary proceeding in a state prison, due process does not require that prisoners be allowed to confront and cross examine persons providing adverse information.

Both Wolff and Morrissey involve the rights of prisoners to confront adverse witnesses, who, as a general rule, are fellow prisoners. The Court has noted in both cases the high risk a prison informant is exposed to when his identity is revealed to the prison population. Absent government concerns for the well being of its witnesses, the right to confrontation and cross-examination is more likely to be regarded as a due process requirement, particularly when the information provided by the witnesses is the major part of the government's case.

What constitutes cross-examination may vary according to the nature of the proceedings. There are cases which hold that when a proceeding is informal, and all parties who have advanced adverse evidence are present, and are free to ask questions of each other, the formal requirement of cross-examination is not necessary. Such a case is Woodbury v. McKinnon, 447 F.2d 839 (5th Cir. 1971). In an

action to revoke a surgeon's hospital privileges a doctor was not allowed to formally cross examine members of the medical staff which had made charges against him. The court noted that the proceeding was informal, no witnesses were presented, and the surgeon was free to ask questions of those making accusations against him. Under these circumstances, it was not a denial of due process to refuse to permit the doctor's attorney to engage in formal cross-examination.

F. Impartial and Reasoned Decisions

Implicit in the notion of a fair hearing is that the decision-maker meets commonly accepted standards of impartiality. Kwong Hail Chew v. Colding, 344 U.S. 590, 97 L. Ed 576 (1963). A hearing conducted by a biased, prejudiced, interested or disqualified administrative tribunal is a denial of constitutional due process which nullifies the proceeding before the agency. Long Beach Sav. and Loan v. Federal Home Loan Bank Bd., 189 F. Sup. 589 (S.D. Calif 1960). Not only is a biased decisionmaker constitutionally unacceptable but "our system of law has always endeavored to prevent even the probability of unfairness." In re Murchison, 349 U.S. 133, 136 (1955). However, it is well settled that the combination of investigative and adjudicative functions with a single agency does not constitute a per se violation of due

process See e.g. FTC v. Cement Institute, 333 U.S. 683 (1948), Richardson v. Peralex, 402 U.S. 389 (1971), Pangburn v. CAB, 311 F.2d 349 (1st Cir. 1962).

In Withrow v. Larkin, 421 U.S. 33, (1975), a board of medical examiners moved directly from a closed investigatory hearing regarding alleged malpractice immediately into a hearing as to whether the subject's license should be revoked. The litigant sought to enjoin this proceeding on the grounds that to have the investigative board become the adjudicative panel violated his right to an impartial tribunal. The Court rejected this position, holding:

The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weaknesses, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented. 421 U.S. at 47.

In short the Due Process Clause requires that the end product of a fair hearing is a conclusion based on the evidence presented at the proceeding, reasonably considered by the examiner, and findings made on that basis of that

evidence. Jordan v. American Eagle, 169 F.2d 281 (D.C. Cir. 1948). Klinge v. Lutheran Charities, 523 F.2d 56 (8th Cir. 1975). Where the proceeding is relatively unique, the decision should state the substantive standard on which the evidence was assessed as well as the evidence on which the tribunal based its decision in order to aid in any subsequent court review of the proceeding.

Appendix E

Comparison of Major Provisions of DoD Dir 1332.14 With Service Implementing Instructions June 1978

DoD 1332.14	ARMY (ARs 635-10, 635-200)	NAVY (BUPERSMAN(BPM))	MARINE CORPS (MARCORSEPMAN (HCSM))	AIR FORCE (AFMs 39-10, 39-12)
I. General Provisions				
A. Prescribe appropriate internal procedures for periodic explanation to members of the types of discharge certificates, the basis for their issuance and the possible effects of various certificates upon reenlistment, civilian employment, veterans' benefits and related matters. As a minimum, such explanation shall take place each time the Articles of the Uniform Code of Military Justice are explained, pursuant to 10 USC 937. (Failure on the part of the member to receive or to understand such explanation, however, shall in no event be considered a defense in an administrative discharge proceeding, or a bar thereto.)	Same Additionally, regulations require that a comprehensive explanation be given enlisted personnel entering active duty. (See AR 350-21)	Similar Article 3420181 Does not specify when explanation to take place.	Same Para 6001.3a	Same, with addition of explanation at time of entry.

DoD 1332.14

I. General Provisions (Cont'd)

- B. Assure that the purpose and scope of the Discharge Review Board and the Board of Correction of Military/Naval Records, established pursuant to 10 USC 1552 and 1553 is explained during the separation processing of any member discharged under other than honorable conditions

Same

Additionally, provide agency address for obtaining forms and explanatory information for upgrade of discharge.

Same

Article 3420181

ARMY (ARS 635-10, 635-200)

NAVY (BUPERSMAN(BPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

Same
Para 6001.3b

Same, plus extended to members separated with general discharge and where authority for separation is a bar to reenlistment. Separatee receives:

1. Explanation of purpose and scope of Air Force DRB and BCMR
2. Copy of AFRs 20-10 (DRR) and 31-3 (BCMR)
3. DD Form 149, Application for Correction of Military or Naval records
4. DD Form 293, Application for Review of discharge or dismissal from the Armed Forces of the United States
5. A Department of Labor Exemplary Rehabilitation certificate brochure, if received less than an honorable discharge (AFR 35-6)

C. In determining whether a member

Same
(Par:

Same
(Para 1-26, AR635-200)

Samr

Article 3420181

Same

DoD 1332.14

ARMY (ARs 635-10, 635-200)	NAVY (RUPERSMAN(RPM))	MARINE CORPS (MARCORSEPMAN (MCSM))	AIR FORCE (AFMs 39-10, 39-12)
----------------------------	-----------------------	---------------------------------------	-------------------------------

1. General Provisions (Cont'd)

should retain current military status or be administratively separated, the member's entire military record may be evaluated.

1. Include (1) records of non-judicial punishment imposed during a prior enlistment or period of service, (2) all records of conviction by court-martial, and (3) any other factors which are material and relevant.

2. Commanding Officers, investigating officers, administrative discharge boards, and other Agencies charged with making such determinations, shall consider records of nonjudicial

1. Same
Para 6002.3

2. Same
Para 6002.3

I. General Provisions (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (RUPERSMAN(RPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

punishment imposed during a period of service only if such records of punishment would have, under the particular circumstances of the case, a direct and strong probative value in determining whether retention or administrative separation is appropriate.

3. Cases in which the circumstances may warrant use of such records shall ordinarily be limited to those involving patterns of conduct which become manifest only over an extended period of time.

4. When a record of nonjudicial punishment imposed during a current enlistment or period of service is

3. Similar Para 6002.3a "The use of NJP records imposed during a prior enlistment".....

4. Slightly different, Para 6002.3b "When a member has been awarded NJP during his/her enlistment or current period of service..... Shall not be

DoD 1332.14

I. General Provisions (Cont'd)

considered, isolated incidents and events which are remote in time or have no probative value in determining whether retention or administrative separation should be effected shall have minimal influence on the determination.

ARMY (ARs 635-10, 635-200)

NAVY (RUPERSMAN(RPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

considered in making the determination to retain or separate member."

DoD 1332.14

II. Personal Abuse of Drugs
Other Than Alcoholic
Beverages

A. Discharge with an honorable discharge, when based on evidence developed as a direct or indirect result of a urinalysis test administered for identification of drug abusers, or by a member's volunteering for a drug problem under the Drug Identification and Treatment Program administered by his/her particular Armed Forces, and:

1. Member's record indicates lack of potential for continued military service; or
2. Long-term rehabilitation is determined necessary and member is transferred to a Veterans'

ARMY (ARs 635-10, 635-200)

Same - but also includes alcohol abuse. Additionally, on a case by case basis, the GCM authority may suspend a separation for a period not to exceed 6 months.

NAVY (RUPERSMAN(RPM))

Similar Article 3420183

MARINE CORPS
(MARCORSEPHAN MCSH))

Basically the same with the exception that this is not currently listed as a separate general basis for discharge. It is still listed under unsuitability.

Para 6016.1g

AIR FORCE (AFMs 39-10, 39-12)

Same

Documentation Required

1. Member must be informed in writing of reason(s) for discharge action.
2. Member must be afforded an opportunity to make a statement or decline the opportunity in writing.

DoD 1332.14	ARMY (ARs 635-10, 635-200)	NAVY (RUPERSMAN(RPM))	MARINE CORPS (MARCORSEPMAN MCSH))
II. Personal Abuse of Drugs Other than Alcoholic Beverages (cont'd)			
Administration or civilian medi- cal facility for rehabilitation; or			
3. Member has failed, through inability or refusal, to participate in, cooperate in, or complete a drug abuse treatment and rehabilitation program.		3. Command must attempt to provide a minimum of 30 days drug counseling.	
8. Discharge Authority.	GCM and SPCM authority for personnel with less than 18 years service; HQDA for per- sonnel with more than 18 years service. GCM autho- rity may delegate authority to his deputy or other offi- cer within his headquarters except where specifically prohibited. (Para 1-32, AR 635-200).	Chief of Naval Personnel	Para 6016.1 Commandant of the Marine Corps (CHC) and all GCM authorities
III. Unsuitability			
A. Personality Dis- order: As deter- mine by medical authority and de- scribed in the	Same, except that medical authority is further defined in Army separation regula- tions as a physician trained in psychiatry and psychiatric	Similar Article 3420184 Performance marks must be consistent with the diagnosis	Basically the same Para 6016.1b Difference is that we use sect 5 of the International Classification of Diseases

DoD 1332.14

III. Unsuitability (cont'd)

Diagnostic and Statistical Manual (DSM-III) of Mental Disorders, American Psychiatric Association which interferes with member's ability to adequately perform duties. Exception: Combat exhaustion and other acute situational maladjustments.

B. Alcohol Abuse.
Failure, through inability or refusal to participate in, cooperate in, or complete an alcohol abuse treatment program.

Member must be counseled concerning his/her deficiencies and given a reasonable opportunity to overcome them prior to initiating processing procedures.

MARINE CORPS
(MARCORSEPMAN (MCSM))

NAVY (BUIPERSMAN (BPP))

ARMY (ARS 635-10, 635-200)

AIR FORCE (AFMs 39-10, 39-12)

(a) Inadequate performance
(b) Documented malperformance

diagnosis. Further, regulation provides that each individual discharged due to personality disorder be furnished an honorable discharge unless he or she has been convicted by general court-martial or more than one special court-martial during the current enlistment period.
(AR 635-200)

Same
Article 3420184

Same
Para 6016.1e

Same, except that this has been incorporated with drug abuse and provides for only a honorable discharge when the exemption policy applies. The Army does not separate personnel for alcohol abuse under Unsuitability.
(Chap 9, AR 635-200)

DoD 1332.14

III. Unsuitability (cont'd)

C. Homosexual or other aberrant sexual tendencies.

ARMY (ARs 635-10, 635-200)

Same; however, provision does not include "other aberrant sexual tendencies." Counseling and rehabilitation efforts (usually required in Unsuitability cases) may be waived by the convening authority. (Para 13-8, AR 635-200)

NAVY (RUPERSMAN (RPM))

Similar (See RP Inst. 1900.96)

Criteria:
1. Must be substantiated by a medical evaluation conducted by military medical authority (both homosexual and aberrant tendencies).

2. Requires a statement by Commanding Officer assessing the truthfulness of members' professed beliefs (homo tendencies).

3. Homo tendencies - member may appeal an authorized discharge to the Secretary of the Navy.

MARINE CORPS (HARCORSEPMAN (MCSM))

Same
Para 6016.1P

AIR FORCE (AFMs 39-10, 39-12)

Same, except also includes

1. Acts where there is sufficient evidence available to prove that, during the current enlistment, the airman engaged in one or more homosexual acts or proposed or attempted to perform an act of homosexuality

2. Prior to becoming a member of the Air Force -- (same as III C1)

D. Unsanitary habits.

Counseling required

No provision

Same
Article 3420184

Similar. Para 6016.1h

Counseling not currently required. Change 1 to current HARCORSEPMAN will include the requirement.

Same but adds "Includes but is not limited to repeated infection of venereal disease, a continued and obstinate refusal to bathe and similar refusals to observe personal hygiene"

E. Financial irresponsibility.

Counseling required

No provision

Same
Article 3420184

Same
Para 6016.1c

Same

DoD 1332.14

III. Unsuitability (cont'd)

F. Apathy, defective attitude, inability to expend effort constructively. As a significant observable defect elsewhere not readily describable.

Counseling required

ARMY (ARs 635-10, 635-200)

Same. Rehabilitation and rehabilitation Counseling required. may be waived by the special or general court-martial when he determines that further duty by the SM would create serious disciplinary problems or a hazard to the military mission or to the SM, or, he is inappropriate because the SM is obviously resisting all rehabilitation attempts or that rehabilitation would not produce the quality soldier desired by the Army. (Para 13-8, AR 635-200).

Also included: Failure to comply with weight standards (AR 600-9)

NAVY (BUPERSMAN(BPM))

Same
Article 3420184

MARINE CORPS
(MARCORSEPMAN (MCSH))

Similar. Para 6016.1d
Also included: Failure to conform to weight standards.

AIR FORCE (AFMs 39-10, 39-12)

Same, but adds that apathy or defective attitude may include, but is not limited to:

1. Failure to properly discharge assignments commensurate with grade and experience; or
2. Progressive downward trend in duty performance; or
3. Failure to demonstrate leadership qualities required for member's grade; or
4. Failure to maintain prescribed standards of dress, personal appearance (other than weight) or military deportment (AFM 39-12)

G. Inaptitude

Counseling required

Similar
Article 3420184

Same
Para 6016.1a

Same, but defines as applicable to those airmen who are inapt due to lack of general adaptability, want of readiness or skill, unhandiness, or inability to learn

Criteria: Applicable to those members who are best described as inapt due to:

- (a) lack of general adaptability
- (b) want of readiness or skill
- (c) unhandiness
- (d) inability to learn

DoD 1332.14

ARMY (ARs 635-10, 635-200)

NAVY (RUPERSMAN(RPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

III. Unsuitability (cont'd)

H. Documentation
Required

Same

Same
Article 3420184

Same
Para 6016.4a & b

1. Same, except adds

- a. Legal counsel
- b. Evaluation officer to interview the respondent, explain the action, advise of right to submit rebuttal assist the airman in preparing a rebuttal and recommend disposition to discharge authority.
- c. Preparation of a Commander's report which includes reasons for actions recommended, type of discharge recommended, all test scores, resume of military record, efforts made to rehabilitate, latest performance report, etc.

Same, except that all members of the Army are entitled to these safeguards. The appointed counsel in cases involving soldiers with less than eight years of service need not be a lawyer, but must be a commissioned officer in the grade of First Lieutenant or higher. (Para 1-3, AR 635-200)

2.

A member with eight or more years of total active and/or reserve military service shall be discharged by reason of unsuitability only in accordance with the safeguards

Same, but further applies to:

- a. Airmen in grade E-4 or higher
- b. Airman holding a Reserve of the Air Force or Warrant Officer Commission

DoD 1332.14

ARMY (ARs 635-10, 635-200)

NAVY (RUPERSHAN (RPM))

MARINE CORPS
(HARCORSEPMAN (HCSM))

AIR FORCE (AFMs 39-10, 39-12)

III. Unsuitability (cont'd)

and procedures specified for misconduct.

I. Consultation with counsel. A lawyer within the meaning of Article 27(b)(1) of the UCMJ unless appropriate authority certifies in the permanent record the nonavailability of a lawyer and sets forth the qualifications of the substituted non-lawyer counsel.

Similar Article 3420184

Same Para 6023.1e(3)

Same, except all are lawyers

Criteria:

1. Only if could receive a general discharge.
2. This opportunity must be in writing.
3. No provisions exist to provide for substitute non lawyer.

J. Discharge authority. May be issued by the commander exercising special court-martial jurisdiction or higher authority.

Chief of Naval Personnel except for (1) Recruit Training Commands

Different. Para 6016.1

Same

- (a) Fraud - RUPERSINST 1910.26
- (b) Unsuit-Pers Dis-orders
- (2) Separation Activities Apathy (RUPERSINST 1910.27)

1. CMC only in cases of homosexual or other aberrant sexual tendencies.
2. CMC and all GCM authorities for all others.

K. Character of Service. Separation with an honorable or a general discharge, as warranted by the member's military record,

Military Record on a 4.0 scale consists of:

Same Para 6016.1 & 6002.2F

Similar except states will be furnished an honorable unless the military record warrants the issuance of a general.

1. Overall trait average = 2.7
2. Military behavior average = not less than = 3.0

DoD 1332.14

ARMY (ARS 635-10, 635-200)

NAVY (RUPERSMAN(RPH))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFHS 39-10, 39-12)

III. Unsuitability (Cont'd)

when it has been determined that an individual is unsuitable for further military service because of:

Character of service is based on type of service warranted by a member's military record. Marks awarded are based on a 4.0 scale. To receive an honorable discharge the minimum criteria is:

1. Overall trait average of not less than 2.7.
2. Military behavior average of not less than 3.0.

AD-A060 521

ASSISTANT SECRETARY OF DEFENSE (MANPOWER RESERVE AFFA--ETC F/G 5/9
REPORT OF THE JOINT-SERVICE ADMINISTRATIVE DISCHARGE STUDY GROU--ETC(U)
AUG 78

UNCLASSIFIED

NL

4 OF 4

AD
A060521



END
DATE
FILMED
01-79
DDC

DoD 1332.14

IV. Misconduct

AIR FORCE (AFMs 39-10, 39-12)

MARINE CORPS
(MARPORSEMAN (MCSM))

NAVY (BUPERSMAN(RPM))

ARMY (ARs 635-10, 635-200)

A. Frequent involvement of a discreditable nature with civil or military authorities. Counseling required

Same. Additionally, rehabilitation attempts/reassignments will be made unless specifically waived by GCM authority. (Para 14-35, AR 635-200)

Same as DoD 3420185

Same as DoD Para 6017.2b

B. An established pattern for shirking.

Same Counseling and rehabilitation action required. (Para 14-35, AR 635-200)

Similar Article 3420185

Same as DoD Para 6017.2c

Counseling Required

C. An established pattern showing dishonorable failure to pay just debts.

Same Counseling and rehabilitation actions required. (Para 14-35, AR 635-200)

Similar Article 3420185

Same as DoD Para 6017.2c

Counseling Required

D. An established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees or judgments of a civil court concerning support of dependents.

Same Counseling and rehabilitation actions required. (Para 14-35, AR 635-200)

Similar Article 3420185

Same as DoD Para 6017.2f

Counseling Required

E. Sexual perversion, including but not limited to (1) lewd and lascivious acts, (2) homosexual acts,

Same, except that members involved in homosexual acts in an apparently isolated episode, stemming solely from immaturity.

Similar Article 3420185
SECNAVINST 1900.9C
Homosexual Acts

Same Para 6017.2a

SAME except

DoD 1332.14

IV. Misconduct (Cont'd)

(3) sodomy, (4) indecent exposure, (5) indecent acts with or assault upon a child, or (6) other indecent acts or offenses.

ARMY (ARs 635-10, 635-200)

curiosity, or intoxication normally will not be processed for discharge because of homosexual acts. Personnel separated for homosexual acts will also be referred to a psychiatrist when deemed appropriate by the examining physician, Social Work officer or Clinical Psychology officer. (Para 1-30, AR 635-200)

NAVY (RUPERSMAN(RPH))

1. When information is received indicating that a member has solicited, attempted, or engaged in a homosexual act, all the facts and circumstances of the case will be thoroughly investigated.

2. Requires a medical evaluation.

MARINE CORPS
(MARCORSEPMAN (MCSN))

AIR FORCE (AFMs 39-10, 39-12)

1. Adds transvestism or other aberrant sexual behavior.

2. Provides for separation under unsuitability when investigation establishes that a airman professes or admits to acts but there is insufficient evidence to prove that he or she has, while in the current enlistment, engaged in or proposed or attempted to perform an act of homosexuality.

3. May appeal to the Secretary of the Navy on an approved discharge.

4. A member who has solicited, attempted, or engaged in a homosexual act on a single occasion and who does not profess or demonstrate proclivity to repeat such an

DoD 1332.14

IV. Misconduct (Cont'd)

AIR FORCE (AFMs 39-10, 39-12)

MARINE CORPS
(MARCORSEPMAN (MCSM))

NAVY (BUPERSMAN (BPM))

ARMY (ARs 635-10, 635-200)

F. Drug abuse, which is the illegal, wrongful, or improper use, possession, sale, transfer or introduction on a military installation of any narcotic substance, intoxicating inhaled substance, marijuana, or controlled substance, as established by 21 USC 812, when supported by evidence not attributed to a urinalysis administered for identification of drug abusers or to a member's volunteering for treatment under the Drug Identification and Treatment Program administered by his/her particular Armed Force.

Same, additionally, alcohol offenses are included in this provision. (Para 14-33, AR 635-200)

Similar
Article 3420185

Same
Para 6017.2d

1. Thirty day drug counseling required prior to discharge.

act may be considered for retention in light of the relevant circumstances.

G. Conviction by civil authorities (foreign or domestic), or action taken which is

Same; when discharge is contemplated, member must be notified in writing of proposed separation action. Member

Same
Article 3420185

Similar, but more detailed (Para 6017.3c)

SAME, while extending the provision to include an action "tantamount to a finding of guilty" where the

DoD 1332.14

IV. Misconduct (Cont'd)

tantamount to a finding of guilty, of an offense for which the maximum penalty under the Uniform Code of Military Justice is death or confinement for one year or more; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender, or is placed on probation or punished in any way, as the result of an offense involving moral turpitude. If the offense is not listed in the Manual for Courts-Martial, 1969 (Rev.), Table of Maximum Punishments, or is not closely related to an offense listed therein, the maximum punishments authorized by U.S. Code or the District of Columbia Code, whichever is lesser, applies. A member subject to discharge because of conviction

ARMY (ARs 635-10, 635-200)

is entitled to appear before a board or waive the right, and to counsel. Commander exercising GCM authority may: (1) Disapprove recommendation for discharge and approve retention; (2) Approve recommendation for retention; (3) Approve recommendation for discharge and approve the issuance of the type discharge certificate recommended by the board or one of a more favorable character than that recommended. He may not direct the issuance of a discharge of a lesser character than that recommended by the board; (4) Approve recommendation for discharge and suspend execution of the discharge. Convening authority may not direct discharge if board recommends retention. (Chap 14, AR 635-200)

NAVY (RUPERSMAN (RPM))

MARINE CORPS
(MARCONSETHAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

court proceeds in a manner inconsistent with any reasonable hypothesis other than an assumed guilt of misconduct.

AIR FORCE: (AFMs 39-10, 39-12)

conduct (Cont'd)

by civil court may be processed for discharge although he/she has filed an appeal or stated his/her intention to do so. However, it will be the general policy to withhold the execution of the approved discharge, pending outcome of the appeal. If the execution of the discharge is considered appropriate without waiting for final action on the appeal, the member may be discharged with the appropriate type of discharge certificate, upon the direction of the Secretary concerned.

Similar Article 3420185

Same
Para 6017.3b

SAME - includes provision for waiver.

H. Procurement of a fraudulent enlistment, induction or period of active service through any device, material misrepresentation, omission or concealment which, if known at the time, might have resulted in rejection. The enlistment of a

MARINE CORPS
(MARCORSEPMAN (MCSH))

NAVY (RUPERSMAN(RPM))

ARMY (ARs 635-10, 635-200)

DoD 1332.14

IV. Misconduct (Cont'd)

minor with false representation as to age without proper consent will not, in itself, be considered as fraudulent enlistment.

SAME

Same

Similar, Para 6017.3a

This provision was suspended by SECDEF during Vietnam and has not been reinstated.

SAME

Same
Para 6005.3a

Same
Article 3420181

Same, except the period 4 August 1964 through 28 March 1973 is excluded (Para 14-22, AR 635-200)

J. A member beyond military control by reason of unauthorized absence:

1. May be discharged under other than honorable conditions in absentia under either of the following circumstances:

- a. When the prosecution of the member is apparently barred by statute of limitations.

E-19

DoD 1332.14

IV. Misconduct (Cont'd)

10 USC 843.
In those cases, a Discharge Under Other Than Honorable Conditions certificate may be issued at any time after it is determined that prosecution is so barred, provided that upon consideration of available extenuating, mitigating and aggravating factors in each case, the discharge authority determines that the best interest of the Armed Forces will be served by issuance of such discharge.

b. When the member who is an alien has gone to a foreign country where

MARINE CORPS (MARCORSEPMAN (MCSM)) AIR FORCE (AFMs 39-10, 39-12)

NAVY (RUPERSMAN (RPH))

ARMY (ARs 635-10, 635-200)

MARINE CORPS (MARCORSEPMAN (MCSH)) AIR FORCE (AFHS 39-10, 39-12)

NAVY (RUPERSHAN(BPH))

ARMY (ARs 635-10, 635-200)

DoD 1332.14

IV. Misconduct (Cont'd)

the U.S. has no authority to apprehend such a member under a treaty or agreement.

c. When the member has been absent for a period of 18 months or more, on a case by case basis, as determined by the Secretary concerned.

2. Shall be subject to the separation limitations of 10 USC 1163, if he/she is a member of a Reserve component.

3. Shall be notified of the imminent discharge action and the effective date thereof by registered or certified mail, return receipt requested, forwarded to the

DoD 1332.14

IV. Misconduct (Cont'd)

record address of the member or next of kin, as appropriate.

AIR FORCE (AFMs 39-10, 39-12)

MARINE CORPS
(MARCORSEPMAN (MCSH))

NAVY (BUPERSMAN (RPM))

ARMY (ARs 635-10, 635-200)

K. Consultation with Counsel. Members being processed for involuntary separation under honorable conditions (general discharge) or under other than honorable conditions, shall be provided the opportunity to consult with a judge advocate or law specialist at the outset of the procedure for separation.

Same
When a lawyer within the meaning of UCMJ is not available, appropriate authority must certify for the permanent record that a lawyer with these qualifications is not available and must state the qualification of the substitute nonlawyer counsel. (Para 1-3c, AR 635-200)

Similar
Article 3420185

If lawyer not available no provisions exist to substitute with a non-lawyer.

Same
Para 6023.1f

SAME
Also applies for involuntary separation with honorable discharge.

L. A Discharge Under Other Than Honorable Conditions certificate may be issued in accordance with the provisions set forth above. The below procedures and safeguards must be followed:

1. A member who is under military control shall be

Same

Same
Article 3420185

1. Same
Para 6023.1c

SAME but not limited to under Other than Honorable Conditions Discharges

1. Same

DoD 1332.14

IV. Misconduct (Cont'd)

notified in writing of the basis for the proposed discharge action and advised that he/she has the following rights:

a. To present

his/her case before an administrative discharge board.

b. To be represented by counsel.

(1) appointed or (2) military counsel of his own choice and (3) civilian counsel at no expense to the Government.

c. To waive the above rights in writing. The member shall be given an opportunity to consult with counsel prior to waiving his/her rights.

2. If a member waives his/her rights, the discharge authority may

Same, additionally, the discharge authority may direct discharge for unsuitability (Para 1-18c, AR 635-200)

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

NAVY (RUFERSMAN (RPM))

Different.
Para 6005.7 & 6018.6
When Marine waives all of his/her rights; the

2. SAME, but adds option of conditional suspension of discharge.

DoD 1332.14

IV. Misconduct (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (NUPERSMAN(NPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

disapprove the waiver and refer the case to an administrative discharge board, or direct retention on active duty, or direct discharge by reason of misconduct or security. If discharge is directed, the type of certificate will be specified.

discharge authority may disapprove the waiver and refer the case to an Admin Discharge Board.

3. A member unable to Same

appear in person before an administrative discharge board, by reason of confinement by civil authorities, shall be advised (by registered mail or certified mail, return receipt requested) of the proposed discharge action, the type of discharge certificate that may be issued, and the fact that action has been suspended

3. Same, Para 6023.2a

3. SAME, but requires appointment of counsel to represent the airman.

DoD 1332.14

ARMY (ARs 635-10, 635-200)

NAVY (BUPERSMAN(RPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

IV. Misconduct (Cont'd)

to give him/her the opportunity to exercise the following rights:

- a. To have his/her case considered by an administrative board.
Member also has the right to consult by correspondence with a consulting counsel. (Para 1-18d, AR 635-200)
- b. To request appointment of a military counsel to represent him/her case before an administrative discharge board.
Same; additionally, member has the right to request representation by military counsel of the member's choice and retain civilian counsel at no expense to the Government. (Para 1-18, AR 635-200)

- c. To submit statements in his/her own behalf.
Same

- d. To waive the foregoing rights, either in writing or by failing to reply to the letter of notification within a prescribed time limit.
Time limit is established as within 30 days from date of receipt. Thirty days may be exceeded when warranted by distance involved or other circumstances (Para 1-18, AR 635-200)
- L.3.d. Prescribed time - 45 days from date of letter of notification.

DoD 1332.14

IV. Misconduct (Cont'd)

MARINE CORPS
(MARCORSEPMAN (MCSM))

NAVY (RUPERSHAN (RPM))

ARMY (ARs 635-10, 635-200)

AIR FORCE (AFMs 39-10, 39-12)

Same

Same, Para 6023.5 and 6023.6

Same

Additionally, member who holds status as a commissioned officer or Warrant Officer will include in his statement whether a waiver of a board hearing does or does not apply to his Reserve status. (Para 1-18, AR 635-200)

4. A member of a Reserve component not on active duty shall be advised (by registered mail or certified mail, return receipt requested and received, indicating delivery) of the proposed discharge action, the type of discharge certificate that may be issued, and the fact that action has been suspended to give him/her the opportunity to exercise the following rights:

Same as IV3a above

a. To have his/her case considered by an administrative discharge board.

Same as IV3b above

b. To request appointment of a military counsel to represent him/her and in

DoD 1332.14

ARMY (ARs 635-10, 635-200)

NAVY (RUPERSMAN(RPM))

MARINE CORPS
(MARCORSEPMAN (MCSH))

AIR FORCE (AFHs 39-10, 39-12)

IV. Misconduct (Cont'd)

his/her absence pre-
sent his/her
case before
an admin-
istrative dis-
charge board.

c. To submit
statements
in his/her
own behalf.

Same as IV3c above

d. To waive the
foregoing
rights, either
in writing or
by failing to
reply to the
letter of not-
ification with-
in a prescribed
time limit.

Same as IV3d above

L.4.d.
Prescribed time - 45 days

M. A discharge under
other than honorable
conditions may be
issued without board
action if a member (1)
is beyond military con-
trol by reasons of
prolonged unauthorized
absence.

Same, 3420181 & 3420270

Same, Para 6025.2 & 6023.2b SAME

DoD 1332.14

IV. Misconduct (Cont'd)

- a. Member shall be notified of the imminent discharge action and the effective date thereof by registered mail or certified mail, return receipt requested, (forwarded to the record address of the member, or next of kin, as appropriate.
- Same; additionally, the member will be notified of the type of discharge to be issued and its effect. In the case of aliens in a country without registered mail service, the letter of notification will be sent to the U.S. Attache for delivery to the individual. (Para 14-31, AR 635-200)

- b. Member shall be subject to the separation limitations of 10 USC 1163, if he/she is a member of a Reserve component;

or (2) resigns or requests discharge for the good of the Service, or (3) waives his/her right to board action.

MARINE CORPS
(MARCORSEPMAN (MCSH))

NAVY (RUPERSMAN (RPM))

AIR FORCE (AFMs 39-10, 39-12)

DoD 1332.14

IV. Misconduct (Cont'd)

N. Discharge Authority.

MARINE CORPS
(MARCONSEPHAN (MCSM))

NAVY (BUPERSMAN (RPM))

ARMY (ARs 635-10, 635-200)

AIR FORCE (AFMs 39-10, 39-12)

General Court-Martial Authority

HQDA for persons with over 18 years service. Commanders exercising GCM authority for personnel with less than 18 years service; authority may be delegated only to a general officer in command who has a judge advocate on his staff for cases arising in that command. (Para 1-32, AR 635-200)

Chief of Naval Personnel,
3420181

Para 6017.1
CMC and all GCM authorities except those cases involving homosexuality which must come to CMC.

O. Character of Service.
Separation under other than honorable conditions, unless the particular circumstances in a given case warrant a general or an honorable discharge, when it has been determined that an individual is unqualified for further military service because the member's military record in the current enlistment of period of obligated service.

Same (Para 14-10, AIR 635-200) Same, 3420180

Same, Para 6002.2g

SAME

DoD 1332.14

V. Administrative Discharge Board

A. Composition. An administrative discharge board shall be comprised of at least three experienced commissioned officers at least one of whom shall be serving in the grade of major/lieutenant commander or higher, and may include a nonvoting recorder. The following additional requirements apply:

1. If the respondent is an enlisted member of a Reserve component or holds an appointment as a Reserve commissioned or warrant officer, the membership shall include a majority of Reserve officers, if reasonably available. Where a Reserve majority is not available, the board shall include at least one

ARMY (ARs 635-10, 635-200)

Same, except the board will contain a nonvoting recorder. The officer initiating action or any intervening officer with direct knowledge of the case may not be a board member. (Para 1-20, AR 635-200)

NAVY (RUPERSMAN(RPM))

Similar, 3420187

- Regular or Reserve officers, Navy or Marine Corps officers, or a combination thereof
- Appointed counsel may be excused if the respondent has obtained civilian counsel or is represented by counsel of his choice

MARINE CORPS (HARCORSEPMAN (MCSM))

Same, Para 6024.2

AIR FORCE (AFNs 39-10, 39-12)

SAME (Specify at least 3 years of active commissioned service)

Same for enlisted members. When enlisted member holds an appointment as an officer or warrant officer, board will be composed of an uneven number of commissioned officers, senior in permanent grade to the Reserve grade of the member. One officer will be RA, the others will be Reserve Component on Active Duty. (Para 1-20, AR 635-200)

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

Reserve Component officer. Voting members shall be senior to the respondent's Reserve grade.

Same

2. If the respondent is an enlisted woman, the board shall, upon the written request of the respondent, include a female officer as a voting member, if such officer is reasonably available. In the event of nonavailability, the reason shall be stated in the record of proceedings.

Same

3. If the respondent is a member of a minority group, the board shall, upon the written request of the respondent, include as a voting member an officer who is also a minority group member, if such

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

officer is reasonably available. When requested, the appointed board member should normally be of the same minority group as the respondent; however, nonavailability of an officer of the same minority group shall not preclude convening the board. In the event of nonavailability, the reason shall be stated in the record of proceedings.

R. Procedures. The board functions as an administrative rather than a judicial body. Strict rules of evidence need not be observed. However, the president may impose reasonable restrictions as to relevancy, competency and materiality of matters considered. When the board meets in closed sessions,

AIR FORCE (AFMs 39-10, 39-12)

MARINE CORPS (MARCONSEPMAN (MCSM))

NAVY (RUPERSMAN(RPM))

ARMY (ARs 635-10, 635-200)

SAME, but may also recommend probation and rehabilitation in conjunction with finding for discharge.

Similar
Para 6024.3a, 6024.3k,
6024.4, 6024.5

Similar
3420187

- Privacy Act statements may be required
- If an objection is made at any stage during the proceedings, the senior member shall ensure that the objection and basis therefor are noted in the record but is not to make a formal ruling thereon.
- Minimum Requirements:
 1. Resume of facts and

Same. Boards will be conducted in accordance with AR 15-6 applicable to formal proceedings with respondents. Expert medical and psychiatric testimony may be presented in affidavit form. (Para 1-23, AR 635-200)

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

only voting members shall be present. The proceedings of the board shall be maintained as prescribed by the Secretary of the Military Department concerned but, as a minimum, shall contain a verbatim record of the findings and recommendations. The board shall recommend one of the following:

1. Retention. Same
2. Discharge for a specified reason and the appropriate discharge certificate, according to the provisions of this Directive and the applicable Service regulations.

C. Rights of the Respondent. Subject to the requirements prescribed herein, a respondent who has not waived a hearing before an administrative discharge board and whose case

ARMY (ARs 635-10, 635-200)

NAVY (RUPERSMAN(RPM))

circumstances with supporting documentation including a summary of testimony of all witnesses heard

2. Findings and recommendations - same as DoD
3. Authentication of proceedings by Senior Member
4. Signature of all board members
5. Review by counsel for the respondent
6. Dissenting vote: must indicate reason for same

MARINE CORPS (MARCORSEPHAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

Similar
34201R7

Similar
Para 6023.1 and 6024.3d

SAME (See AFR 11-31)

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

is presented to such a board has the following rights:

1. The respondent may appear in person, with or without counsel, or if absent, be represented by counsel at all open proceedings of an administrative discharge board. The respondent may be represented by either military counsel appointed by the convening authority, or by military counsel of his/her own choice, provided the counsel requested is reasonably available, as determined under regulations of the Secretary concerned but not by both. In either case, the respondent may employ civilian counsel at his/her own expense.

Same. If respondent appears without counsel, Board President must advise him of his right to counsel, the type of discharge he may receive and its effects on his later life. Members response will be reflected in the record. (Para 1-23, AR 635-200).

substitute

ARMY (ARs 635-10, 635-200)

NAVY (BUPEXMAN(RPM))

MARINE CORPS
(MARCONSEPMAN (MCSH))

AIR FORCE (AFMs 39-10, 39-12)

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (BUPERSMAN(RPM))

MARINE CORPS
(MARCORSEPHAN (MCSN))

AIR FORCE (AFMs 39-10, 39-12)

2. The respondent may challenge any voting member of the board for cause only.

Same

C2. Any challenges are to be referred to the Commanding Officer. He may, if deemed appropriate, appoint a substitute.

3. The respondent may request the appearance before the board of any witness whose testimony he/she believes to be pertinent to his/her case. The respondent will specify in his/her request the type of information the witness can provide. The board will invite the witness to attend if it considers that the witness is reasonably available and that his/her testimony can add materially to the case. If a witness on active duty declines the invitation, the board may refer the matter to the convening authority

Same except that military witnesses under the control of the convening authority will be ordered to attend if reasonably available. Other military witnesses will be requested through command channels. Invitational travel orders will be authorized for witnesses not on active duty when an affidavit will not suffice and the board president determines the personal appearance of the witness is required. (Para 1-23, AR 635-200 and 65001.10 JTR)

3. Similar. MARCORSEPHAN
Para 6024.3b and 6024.3n

DoD 1332.14

V. Administrative Discharge
Board (Cont'd)

for a decision or orders. Witnesses not on active duty must appear voluntarily and at no expense to the Government, except as authorized in implementing regulations of the Military Department concerned.

4. The respondent may, Same

at any time before the board convenes or during the proceedings, submit any answer, deposition, sworn or unsworn statement, affidavit, certificate or stipulation. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

MARINE CORPS
(MARCORSEPMAN (HCSH))

NAVY (BUPERSHAN (BPM))

ARMY (ARs 635-10, 635-200)

AIR FORCE (AFHs 39-10, 39-12)

4-7. Same
Paras 6024.3d, .7 and
.30

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

NAVY (BUPERSMAN (BPM))

ARMY (ARs 635-10, 635-200)

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

5. The respondent may Same

or may not submit to examination by the board. The provisions of Article 31, 10 USC 831 apply.

6. The respondent and Same

his/her counsel may question any witness who appears before the board.

7. Failure of the re- Same

spondent to invoke any of these rights, after he/she has been apprised of same, cannot be considered as a bar to the board proceedings, findings and recommendations.

D. Actions by Discharge Authority. Upon receipt of the record of board proceedings, the discharge authority may take one of the following actions:

1. Approve the board's Same

Prior to forwarding to discharge authority, proceedings will be reviewed by an officer fully cognizant of applicable regulations. If OTH discharge is recommended, this officer must be a JAG. (Para 1-25, AR 635-200)

Similar
3420187 & 3420188

When a board recommends retention in cases other than those involving homosexuality, homosexual or other aberrant tendencies, sexual perversion, drug abuse, civil conviction, fraudulent enlistment, or

Same
Para 6024.9b and 6024.8

1 through 5 (Same)

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (RUPERSHAN(RPM))

MARINE CORPS
(MARCORSEPHAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

recommendations and direct their execution.

2. Approve the board's Same

recommendations for discharge but change the characterization of service to a more favorable one. The discharge authority shall not downgrade the characterization of service.

3. Approve the board's Same

recommendation for discharge but change its basis when the record indicates such action would be appropriate, except that he/she shall not designate misconduct as the basis when the board has recommended discharge for unsuitability.

4.

Approve the discharge but suspend its execution for a specified period of probation.

Same - period may not exceed 6 months (Para 1-25 & 37, AR 635-200)

processing directed by the Chief of Naval Personnel, the Commanding Officer may close the case. In instances stated above, the Chief of Naval Personnel will decide if discharge or retention is appropriate. If discharge is appropriate, the case is referred to the Secretary of the Navy.

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

MARINE CORPS (MARCORSEPHAN (MCSM))

NAVY (BUPERSHAN (BPM))

ARMY (ARs 635-10, 635-200)

AIR FORCE (AFMs 39-10, 39-12)

5. Disapprove the recommendation for discharge and retain the member in the Service.

6. May recommend separation to the Secretary concerned, in the event of a board recommendation for retention, if he/she believes that separation is warranted by the circumstances of the particular case. If separation is approved, an Honorable or a General Discharge certificate, as directed by the Secretary concerned, will be issued.

6. Limits approval to Honorable only.

7. Set aside the findings and recommendations and refer the case to a new board if he/she finds legal prejudice to the substantial rights of Same, except that with due notice to the member the convening authority may incorporate new allegations on subsequent conduct of the respondent and the convening authority could approve recommendations less favorable than those rendered

7. Same

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

AIR FORCE (AFMs 39-10, 39-12)

MARINE CORPS
(MARCONSEPHAN (MCSH))

NAVY (BUPERSHAN(BPM))

ARMY (ARs 635-10, 635-200)

the respondent. No member of the new board shall have served on a prior board which considered the same matter. The record of the proceedings of the earlier board, minus the findings, recommendations and prejudicial matter, may be furnished the successor board. The discharge authority shall not ap- prove findings or recommendations less favorable to the respondent than those rendered by the previous board.

No more than one rehearing may be directed without HQDA approval. (Para 1-25f, AR 635-200).

E. Additional Provisions. No member shall be ad- ministratively dis- charged with a dis- charge under other than honorable

Same. The determination of whether an action has the effect of an acquittal is determined by HQDA pursuant to the request submitted by the convening authority.

Same
3420181

Same
Para 6005.5b

Same except omits exception based on legal technicality not going to the merits.

DoD 1332.14

ARMY (ARs 635-10, 635-200)

NAVY (SUPERSMAN (BPM))

MARINE CORPS
(MARCONSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

V. Administrative Discharge Board (Cont'd)

(Para 1-19, AR 635-200).

conditions, if the grounds for such discharge action are based wholly or in part upon acts or omissions for which the member has been previously tried by court-martial resulting in acquittal or action having the effect thereof, except when such acquittal or equivalent disposition is based on a legal technicality not going to the merits.

F. No member shall be subjected to administrative discharge board action based upon conduct which has previously been the subject of administrative discharge board proceedings, when the evidence before the subsequent board would be the same as the evidence before the previous board, except as provided in V.D.7., of this Directive, and in those cases where the favorable findings

Same
3420181

Same
Para 6024.8a

Same

DoD 1332.14

V. Administrative Discharge Board (Cont'd)

of the previous board are determined to have been obtained by fraud or collusion.

- G. Conditional Waiver. Use of a conditional waiver, as described below, is authorized at the discretion of the Military Department. 1. "conditional waiver" is a statement initiated by a member waiving those rights associated with administrative discharge board proceedings, contingent upon receiving a characterization of military service higher than the least characterization authorized for issuance for the specific reason of separation in the member's situation. If such a statement of waiver is accepted, the particular circumstances of the member's military service warranting the higher characterization will be

MARINE CORPS (MARCORSEPMAN (MCSM))

NAVY (RUPERSMAN(RPM))

ARMY (ARs 635-10, 635-200)

AIR FORCE (AFMs 39-10, 39-12)

Same

Not used

Similar
3420186

- Is used
- Agrees to general discharge
- Is not binding on discharge authority (after 1 July)

DoD 1332.14

V. Administrative Discharge
Board (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (RUPERSHAN (RPM))

MARINE CORPS
(MARCORSEPMAN (MCSH))

AIR FORCE (AFMs 39-10, 39-12)

specifically identified
by the member's com-
manding officer, or
higher authority, in
the discharge cor-
respondence to be filed
in the member's mili-
tary personnel record.

DoD 1332.14

VI. Suspension of Execution of Approved Discharge

The discharge authority or higher authority may, prior to the expiration of the member's enlistment or period of obligated service, suspend execution of an approved discharge for a specified period if the circumstances in a case indicate a reasonable prospect for rehabilitation. During the period of suspension the member shall be afforded an opportunity to demonstrate that he/she is capable of behaving properly for an extended period under varying conditions and that he/she can perform assigned duties efficiently.

A. Upon satisfactory completion of the probationary period, execution of the approved discharge will be cancelled automatically.

B. Additional misconduct on the part of the member during the probationary period of actions which

ARMY (ARs 635-10, 635-200)

Same, except that the suspension period may not exceed six months. (Para 1-27a, AR 635-200)

NAVY (SUPERSMAN(BPM))

Similar
- Periods of probation which involve discharges under other than honorable conditions can be vacated with the approval of the Chief of Naval Personnel
- Normally all other periods of probation may be vacated by the Commanding Officer and should stem from violation of the UCMJ

MARINE CORPS (MARCORSEPMAN (MCSM))

Similar, Para 6026.1

Same
Provides for consideration and recommendations concerning probation by the individual's commander and administrative discharge board. Recommendations are not binding on discharge authority. Also limits the term of probation to from 6 months to 1 year.

AIR FORCE (AFMs 39-10, 39-12)

A. Similar, Para 6026.2

B. Similar, Para 2026.4

2. Not used
Member must return to military jurisdiction and disciplinary action completed prior to execution of the approved

DoD 1332.14

VI. Suspension of Execution
of Approved Discharge
(cont'd)

constitute substandard discharge.

performance of duty or
demonstrate character-
istics of unsuitability
may establish the
basis for one of the
following actions:

1. Punitive or new ad- Same
ministrative action
may be initiated,
notwithstanding the
suspension of execu-
tion of the ap-
proved discharge.
2. Suspension of the Same, additionally, commander
approved discharge concerned or convening author-
ity may (a) withhold action
and the approved until member's return to
discharge executed, military control; (b) advise
the enlisted person in writing
charge in absentia that vacation action is being
when the member has considered and the reasons
been beyond the which warrant such considera-
military control tion. The enlisted person
for 15 or more will be given an opportunity
days. to furnish information in his
own behalf or decline to make
any statement. The commander
taking the action will con-
sider any information the
member submits in his own be-
half and will (1) vacate sus-
pension of approved discharge

MARINE CORPS
(MARCORSEPMAN (MCSM))

NAVY (RUPERSHAN(BPM))

ARMY (ARs 635-10, 635-200)

AIR FORCE (AFMs 39-10, 39-12)

DoD 1332.14

VI. Suspension of Execution
of Approved Discharge
(cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (SUPERSHAN (RPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

and execute discharge, or (2)
continue to suspend execution
of the approved discharge for
the remainder of the probation
period. (Para 1-27, AR 635-
200)

DoD 1332.14

VII. Discharge in Lieu

Resignation or Request for Discharge for the Good of the Service.
Separation under other than honorable conditions is authorized, subject to procedures and safeguards specified elsewhere in this Directive, upon resignation or request for discharge, where conduct has rendered a member triable by court-martial for an offense which is listed in Section A, of the Table of Maximum Punishments, paragraph 127c, Manual for Courts-Martial, 1969 (Rev.), as being punishable by a punitive discharge (the provisions of the Table of Maximum Punishments, Section B., paragraph 127c, Manual for Courts-Martial, 1969 (Rev.), are not applicable to requests for discharge pursuant to this paragraph).

A member who submits a resignation or requests discharge for the good of the Service may be issued a Discharge Under

ARMY (ARs 635-10, 635-200)

Same. The request for discharge may be submitted at any time after court-martial charges are preferred against the member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. (Para 10-2, AR 635-200)

NAVY (RUFERSMAN(BPM))

Similar, 3420270.
 Criteria:
 1. Request may be submitted after court-martial charges have been preferred.
 2. Requires report of medical examination:
 a. that a psychiatric eval is not warranted or
 b. a copy of the psychiatric evaluation

MARINE CORPS
 (MARCORSEPMAN (MCSM))

Same, Para 6021.

AIR FORCE (AFMs 39-10, 39-12)

Same, except makes indirect reference to manual of court-martial provisions.

DoD 1332.14

VII. Discharge in Lieu
(cont'd)

Other Than Honorable Conditions certificate without board action, provided he/she has been afforded the opportunity to consult counsel and certifies in writing that he/she understands (a) he/she will receive a discharge under other than honorable conditions, and (b) the adverse nature of such a characterization and the possible consequences thereof.

Notwithstanding a member's written acknowledgment that he/she will be issued a Discharge Under Other Than Honorable Conditions certificate, under the provisions of subsection J, enclosure 2, "Resignation or Request for Discharge for the Good of the Service," the discharge authority may direct issuance of either an Honorable or General Discharge certificate, if warranted.

discharge. Consulting counsel will advise the member concerning the elements of the offense or offenses charged, burden of proof, possible defenses, possible punishments, provisions of this chapter, requirement of voluntariness, type of discharge normally given under the provisions of this chapter, rights regarding the withdrawal of the member's request, the loss of Veterans Administration benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. (Para 10-2, AR 635-200)

Same

NAVY (BUPERSMAN(RPM))

ARMY (ARs 635-10, 635-200)

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

Officer exercising GCM jurisdiction over the member concerned.

DoD 1332.14

VIII. Characterization of Service

ARMY (ARs 635-10, 635-200)

NAVY (BUPERSMAN(RPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

A. Guidelines. When separated under the provisions of this Directive, a member shall be provided a certificate reflecting the character of his/her service for the period concerned.

Similar, 3850120

Same, Para 6003

Same (AFM 39-12/AFR 39-10)

Additional Guidelines: (1) Character of service will be determined only by the member's current enlistment or current period of service which includes a member's military behavior and performance of duty. (2) A checklist will be prepared to assist in the overall evaluation (Para 1-14, AR 635-200)

Criteria
Overall average: 2.7
Military Behavior Average: 3.0

1. Honorable.

Predicated upon proper military behavior and proficient performance of duty with due consideration for the member's age, length of service, grade and general aptitude. A member will not necessarily be denied an honorable characterization solely by reason of a specific number of convictions by courts-martial or actions under Article 15 of the

Same, additionally, regardless of the authority for discharge, a member is entitled to an honorable discharge if evidence exempted by the Alcohol and Drug Abuse Prevention and Control Program is included in the discharge proceedings. (Para 1-14, AR 635-200) Members separated with character or behavior disorder will receive an Honorable discharge unless he has been convicted by a General Court-Martial. (MILPERCEN msg 151800Z Feb 78) Personnel separated under the Trainee Discharge Program will receive an Honorable Discharge Certificate (Para 5-33, AR 635-200)

1. Same, but expands to provide examples and adds that where there is doubt that an honorable or general should be awarded, the doubt should be resolved in favor of the airman

DoD 1332.14

VIII. Characterization of Service (cont'd)

Uniform Code of Military Justice (10 USC 815, during his/her current enlistment or period of obligated service. An Honorable Discharge certificate (DD Form 256) shall be provided upon discharge. A separation with an honorable discharge may be effected by the member's commanding officer or higher authority when the member is eligible for or subject to discharge and it has been determined that the member merits an honorable discharge under prescribed Service standards.

2. Under Honorable Conditions.

ARMY (ARs 635-10, 635-200)	NAVY (BUPERSHAN (BPM))	MARINE CORPS (MARCORSEPMAN (MCSH))	AIR FORCE (AFMs 39-10, 39-12)
			Same

Same, Para 6004

Similar, 3580120

Same, except that when a member's service is

DoD 1332.14

VIII. Characterization of Service (cont'd)

MARINE CORPS (MARCORSEPMAN (MCSM)) AIR FORCE (AFMs 39-10, 39-12)

NAVY (BUPERSMAN(BPM))

ARMY (ARs 635-10, 635-200)

Appropriate when a member's military record is not sufficiently meritorious to warrant an honorable characterization, as prescribed by the regulations of the Service concerned. A General Discharge certificate (DD Form 257) shall be provided upon separation under honorable conditions may be effected by the commanding officer or higher authority when the member is eligible for or is subject to discharge and it has been determined, under prescribed Service standards that such discharge is warranted.

characterized as general (except when discharged by reason of unsuitability, misconduct, or security) the specific basis for such separation will be included in the member's military personnel record. (Para 1-13b, AR 635-200) Additional guidelines: The receipt of a general discharge is normally a member whose military record and performance is satisfactory. The member may have had frequent nonjudicial punishments but not for serious infractions. He may be a troublemaker, but his conduct is not so bad as to require discharge for cause of a discharge under less than honorable conditions. (Para 1-13b, AR 635-200)

Special consideration for upgrading to an Honorable: Receipt of Personal decorations

DoD 1332.14

VIII. Characterization of Service (cont'd)

When a General Discharge certificate is issued for one of the reasons listed in paragraphs A. through E., the enclosure 2, the specific basis therefor shall be included in the member's permanent personnel records.

3. Under Other Than Same; additionally, guidelines specified opposite VIIIa
- tions. Appropriate when a member is separated for (a) misconduct or security, when based on the approval of a recommendation of an administrative discharge board or waiver of the right to board action, or (b) resignation or request for discharge for the

ARMY (ARs 635-10, 635-200)

NAVY (RUPERSMAN(BPH))

MARINE CORPS
(MARCORSEPMAN (MCSH))

AIR FORCE (AFMs 39-10, 39-12)

SAME

Similar, Para 6005

Same, 3850120 & 3420180

DoD 1332.14

VIII. Characterization of
Service (cont'd)

good of the
Service. A
Discharge Under
Other Than
Honorable Con-
ditions certifi-
cate (DD Form
794) shall be
provided upon
discharge. A
discharge under
other than hon-
orable condi-
tions shall be
directed by a
commander exer-
cising general
court-martial
jurisdiction or
by higher
authority. This
authority may
be delegated to
a general or
flag officer in
command who has
a judge advo-
cate or law
specialist on
his/her staff
for cases aris-
ing in that
command. Every
action taken pur-
suant to such a

ARMY (ARs 635-10, 635-200)

MARINE CORPS
(MARCORSEPMAN (MCSH))

AIR FORCE (AFMs 39-10, 39-12)

DoD 1332.14

VIII. Characterization of Service (cont'd)

delegation shall state the authority therefor.

B. Special Consideration

1. In any case in which a Discharge Under Other Than Honorable Conditions certificate is authorized under this Directive, a member may receive a more favorable characterization if, during his/her current enlistment or period of obligated service, or any voluntary or involuntary extension thereof, or period of prior service, he/she has been awarded a personal decoration as defined by his/her Service, or if warranted by

AIR FORCE (AFMs 39-10, 39-12)

MARINE CORPS
(MARCORSEPHAN (MCSM))

NAVY (BUPERSHAN (BPM))

ARMY (ARs 635-10, 635-200)

SAME

Similar
Para 6005.4

Similar
Used only to upgrade General
to Honorable Discharges

Same; additionally, guidelines specified opposite VIIa above apply.

DoD 1332.14

MARINE CORPS
(MARCORSEPMAN (MCSM))

NAVY (BUPERSMAN(BPM))

ARMY (ARs 635-10, 635-200)

AIR FORCE (AFMs 39-10, 39-12)

VIII. Characterization of Service (cont'd)

the particular circumstances of a specific case.

2. Except as indicated below, the characterization of service of the current enlistment or period of service will be determined solely by the member's military record during that enlistment or period of service, plus any extensions thereof prescribed by law or by the Armed Forces concerned, or effected with the consent of the member. The following shall not be considered:

- a. Prior service Same; additionally, mental activities status evaluation or similar

Same, 3420181

Same, Para 6002.4

2. SAME

NOTE: The Air Force discharge characterization process is essentially subjective. Guidance provided emphasizes the variety of circumstances and considerations that must be evaluated if the characterization process is to contain the essential elements of fairness, equity, and compassion which we believe can only be achieved through the application and exercise of reasoned judgment.

DoD 1332.14

VIII. Characterization of Service (cont'd)

MARINE CORPS
(MARCONSEPMAN (MCSH))

AIR FORCE (AFMs 39-10, 39-12)

NAVY (RUPERSMAN(BPM))

ARMY (ARs 635-10, 635-200)

including medical evaluation during the period of service being but not characterized may not be con- limited to sidered. Personal decorations records of received during prior service nonjudicial may be considered in char- punishment, acterizing the current period records of absence with- of service. (Para 1-14, AR absence leave, or 635-200) of commission of other of- fenses for which pun- ishment was not imposed.

b. Preservice ac- Same

tivities, ex- cepting mis- representa- tions, in- cluding omis- sion of facts which, if known, would have pre- cluded, post- poned or otherwise affected the member's eligibility for enlist- ment or in- duction.

DoD 1332.14

IX. Convenience of the Government

- A. General demobilization, reduction in authorized strength or an order applicable to all members of a class of personnel specified in the order.

MARINE CORPS (MARCORSEPMAN (MCSM))

NAVY (BUPERSMAN(BPM))

ARMY (ARs 635-10, 635-200)

AIR FORCE (AFMs 39-10, 39-12)

Same (Para 5-30, AR 635-200). Also see IXP below.

Same as Para 6012.1a.

Same

1. Criteria is provided at time of issuance of the NAVOP.

2. Type discharge issued as warranted by member's service record.

- B. Acceptance of a commission or appointment or acceptance into a program leading to a commission or appointment in any branch of the Armed Forces, for active duty only.

Same Para 6012.1b.

Same

- C. Immediate enlistment or reenlistment.

Similar Para 6012.1b.

Same

1. Must meet age criteria.

2. Member's performance must be such to warrant continuation on active duty.

DoD 1332.14

IX. Convenience of the Government (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (BUPERSMAN(BPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

3. Must be physically qualified (including meeting the weight standards).

4. Must meet citizenship requirements.

5. Must meet professional growth criteria and other quality control standards (BPM 1133.22).

6. Reservist on active duty may enlist in Regular Navy provided total active obligated service is for minimum 4 years.

7. Reenlistment under continuous service condition must be accomplished on-board within 24 hours. If 24 hours elapsed since discharge action, member's reenlistment must be accomplished at recruiting stations.

8. If member in low-pay grade, because of an excessive number of dependents, becomes an administrative burden to command due to indebtedness, reenlistment may be denied.

DoD 1332.14	ARMY (ARs 635-10, 635-200)	NAVY (BUPERSHAN (BPH))	MARINE CORPS (MARCORSEPMAN (MCSH))	AIR FORCE (AFMs 39-10, 39-12)
IX. Convenience of the Government (Cont'd)				
D. Erroneous induction or enlistment.	Similar Covered separately as erroneous enlistment/extensions (para 5-25) and Unfulfilled or erroneous enlistment commitment (para 5-26).	Same 3850220	Similar Para 6012.1c	Same
E. Separation of members serving in unspecified enlistments.	No provision.	No provision.	No provision.	Similar--refer to as Discharge by Reason of Resignation.
F. Early separation of personnel under various authorized programs and circumstances. (See DoD Dir 1332.15.)	Same Not delegated below HQDA level.	3850220/3640240	Similar Para 6012.1a	Same

1. Acceptance for enrollment to a university/college or technical/vocational school in which release is authorized within 3 months of expiration of contract. This provision will be placed in BPM in July 1978. (Not delegated below CNP level.)

2. When ship or mobile unit is about to deploy with probability of not returning to United States before expiration of member's contract but within 3 months of member's EAOS.

DoD 1332.14

IX. Convenience of the Government (Cont'd)

AIR FORCE (AFMs 39-10, 39-12)

MARINE CORPS
(MARCORSEPMAN (MCSM))

NAVY (BUPERSMAN(BPM))

ARMY (ARs 635-10, 635-200)

3. Early release during Christmas and New Year holiday (member's EAOS is within an approximate 3-week period).

4. Change of homeport of ship or command (within 3 months of EAOS).

5. Type discharge issued as warranted by service record.

G. Voluntary separation of women for pregnancy or childbirth.

Same provisions exist but are listed as other separations and not COG. Counseling required for pregnant members (Chap 8, AR 635-200) and sole parents (para 5-27-1, AR 600-20).

Same
Para 6012.3b

3810170 and 3850220

Same
Provides that separation will be granted unless other administrative action is deemed more appropriate.

1. Member must voluntarily request discharge due to pregnancy.

2. Must obtain medical certification of pregnancy.

3. Members who elect discharge may be retained on active duty for approximately 4 months for command relief purposes.

DoD 1332.14

IX. Convenience of the Government (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (BUPERSMAN(BPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

4. Type discharge issued as warranted by service record.

3850220/3810170

Same (para 5-34, AR 635-200)

H. Inability to perform prescribed duties, repetitive absenteeism or nonavailability for worldwide assignment as a result of parenthood.

Same
Para 6012.1j

Same

1. If as a result of parenthood (sole parenthood), member may be separated for following reasons:

- (a) repetitive absenteeism
- (b) unable to comply with assignment orders
- (c) performance becomes substandard

2. Sole parenthood can be the result of:

- (a) death of spouse
- (b) single parent
- (c) divorced
- (d) adoption of a child

3. Type discharge issued as warranted by service record.

DoD 1332.14

IX. Convenience of the Government (Cont'd)

- I. Conscientious objection (See DoD Dir 1300.6).

ARMY (ARs 635-10, 635-200)

Same (AR 600-43)

NAVY (BUPERSMAN(BPM))

860120

MARINE CORPS
(MARCORSEPMAN (MCSM))

Same
Para 6012.7b

AIR FORCE (AFMs 39-10, 39-12)

Same

- I. Member must provide following information:

a. Name/address of schools/colleges attended after age 16

b. Chronological list of jobs, positions, type of work after age 18

c. All former residences after age 16

d. Each parent's name, present address and whether living or dead

e. Religious denomination or sect of spouse and/or each parent

f. Whether application was made to Selective Service System for classification as a conscientious objector prior to entry into Armed Forces

g. A thorough description of nature of beliefs which require member seek conscientious objector status

DoD 1332.14

IX. Convenience of the Government (Cont'd)

MARINE CORPS
(MARCORSEPHAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

NAVY (BUPERSMAN(BPM))

ARMY (ARs 635-10, 635-200)

h. Explanation of how member's beliefs changed/developed

i. Explanation of when/why these beliefs became incompatible with military service

j. Explanation of circumstances; if any, which member believes in use of force under any foreseeable circumstances

k. Explanation of how member's daily life style has changed as result of his beliefs and what future actions member plans to continue to support his beliefs

l. Explanation which most conspicuously demonstrates member's consistency and depth of his beliefs which prompt the application

m. Whether member has ever been member of any military organization or establishment before entering upon his present term of service

DoD 1332.14

IX. Convenience of the Government (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (BUPERSMAN(BPH))

MARINE CORPS
(MARCORSEPMAN (MCSN))

AIR FORCE (AFHs 39-10, 39-12)

n. Whether applicant is member of a religious sect or organization. If yes, member must include following:

(1) Name of sect/
location

(2) When, where, and how applicant became a member of said sect or organization

(3) Name/location of any church, congregation, or meeting which applicant customarily attends and extent of applicant's active participation

o. Description of applicant's relationship with and activities in all organizations which applicant is or has been affiliated, other than military, political, or labor organizations

p. List/attach any additional information, such as letters, references or official statements of organizations to which applicant belongs. The burden is on applicant to obtain and forward such information.

DoD 1332.14

IX. Convenience of the
Government (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (BUPERSMAN(BPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

2. Member is advised of provisions of Privacy Act and signs a statement thereof.

3. Process of member's application is held in abeyance pending completion of any disciplinary action.

4. The applicant is personally interviewed by a chaplain, psychiatrist or medical officer and application then reviewed by an investigating officer assigned by the commanding officer.

5. Member advised of provisions of 38 U.S.C. 3103 concerning possible non-entitlement to benefits administered by VA due to discharge as a conscientious objector under certain conditions.

6. Member's application, investigating officer report, chaplain and medical officer's recommendation are submitted to CNP for final disposition.

7. Type of discharge issued as warranted by member's service record.

DoD 1332.14	ARMY (ARs 635-10, 635-200)	NAVY (BUPERSHAN(RPM))	MARINE CORPS (MARCORSEPMAN (MCSM))	AIR FORCE (AFMs 39-10, 39-12)
IX. Convenience of the Government (Cont'd)				
J. Sole surviving son/daughter and certain family members. (See DoD Dir 1315.14.)	Same, except that the term "surviving family members" is used in lieu of "certain family members." (para 5-22, AR 635-200)	1860100 and 3850320	Same Para 6012.7a	Similar--do not make reference to "certain family members."
		<ol style="list-style-type: none"> 1. A sole surviving son/daughter is only remaining son/daughter of a family in which, by reason of service in any of the Armed Forces of the United States, the father, or one or more sons or daughters: <ol style="list-style-type: none"> a. Was killed in action b. Died as result of wounds, accident or disease c. Is in a captured or missing-in-action status d. Is permanently 100 percent physically or mentally disabled as determined by the VA. 2. A family is considered to include husband and wife, or the father, mother, sons, daughters, and all brothers and sisters in the following categories: 		

DoD 1332.14

IX. Convenience of the
Government (Cont'd)

ARMY (ARs 635-10, 635-200)

NAVY (BUPERSHAN(BPM))

MARINE CORPS
(MARCORSEPHAN (MCSM))

AIR FORCE (AFMs 39-10, 39-12)

a. Brother or sister of
whole blood

b. Brother or sister of
half blood

c. Stepbrother or step-
sister

d. Brother or sister by
adoption

3. Member who qualifies as
sole surviving son/daughter
subsequent to enlistment/
reenlistment may apply and be
given immediate discharge
except when:

a. Court-Martial charges
pending

b. When member is sole
surviving son/daughter of a
family solely because family
member is captured by an
enemy or in missing-in-action
status

c. During war or national
emergency declared by Congress.

4. Member must request designa-
tion as sole surviving mem-
ber or discharge.

DoD 1332.14

IX. Convenience of the Government (Cont'd)

AIR FORCE (AFMs 39-10, 39-12)

MARINE CORPS
(MARCORSEPMAN (MCSM))

NAVY (BUPERSMAN(BPM))

ARMY (ARs 635-10, 635-200)

5. Request for such designation or discharge may be made by parent/parents.

6. Member may waive rights as sole surviving member and therefore discharge not affected and limited duty designation (L-9) may be assigned.

7. If member reenlist/enlist with L-9 designator, such action is considered as having waived rights for discharge action.

8. Type discharge issued as warranted by service record.

K. Condition, not a physical disability, which interferes with performance of duty.

Same (para 5-18. AR 635-200)

3850220/3840440

Same
Para 6012.11(7)

Same

1. The following conditions apply:

- a. Enuresis
- b. Somnambulism
- c. Allergic to clothing
- d. Motion sickness

DoD 1332.14

IX. Convenience of the Government (Cont'd)

MARINE CORPS
(MARCORSEPMAN (HCSH))

NAVY (BUPERSHAN(BPH))

ARMY (ARS 635-10, 635-200)

AIR FORCE (AFHS 39-10, 39-12)

2. Command must provide sufficient documentation (e.g., statement, etc.) that such condition interferes with member's performance and/or hazardousness to the command's mission.

3. Type discharge issued as warranted by service record.

L. For such other reasons as may be prescribed by the Secretary of the Military Department concerned.

Same. Such authority may be given either in an individual case or by correspondence applicable to all cases specified in such correspondence. (Para 5-3, AR 635-200)

Not used.

Same
Para 6012.1f

Same

M. Notwithstanding the specific provisions of this or any other Directive, or any proceedings, decisions or action in accord with this or any other Directive, the Secretary concerned may direct the separation of any member, prior to the expiration of term of service, after determining it to be in the best interest of that Department.

Except for authorities delegated in applicable Army regulations, the discharge or release of any enlist member for convenience of the Government will be the Secretary's direction with issuance of an honorable or general discharge certificate as determined by him. (Para 5-3, AR 635-200)

3850220

Administrative discharge board recommends retention and the Chief of Naval Personnel recommends discharge with SECNAV approval.

Similar
Para 6012.1g

Same

DoD 1332.14

IX. Convenience of the Government (Cont'd)

N. Characterization of Service. An honorable separation (honorable discharge) as warranted by the member's military record.

ARMY (ARs 635-10, 635-200)

Honorable or General discharge as warranted by the service record unless specifically directed. Honorable only (e.g., Trainee Discharge).

3850120

NAVY (BUPERSMAN(BPM))

MARINE CORPS
(MARCORSEPMAN (MCSM))

Same
Para 6002.2b

AIR FORCE (AFMs 39-10, 39-12)

Differs in provision for honorable or general-- otherwise same.

1. Following table is utilized in determining eligibility for issuance of honorable discharge based on 4.0 system:

a. E-1--E-4: Must have an overall trait average of not less than 2.7 and average of not less than 3.0 in military behavior.

b. E-5--E-6: Must not have two unsat minor or unsat serious markings in same trait in past 2 years. If member had overall trait average of less than 2.7 or a military behavior average of less than 3.0 when marks earned are averaged, the following is utilized:

Time Remaining

0 days - 1 year
0 days - 1 year
1 year - 2 years
1 year - 2 years

DoD 1332.14

IX. Convenience of the
Government (Cont'd)

ARMY (ARs 635-10, 635-200) NAVY (RUPERSMAN(BPM)) MARINE CORPS
(MARCORSEPMAN (MCSM)) AIR FORCE (AFMs 39-10, 39-12)

Mark

No unsat minor/unsat serious
1 unsat minor/unsat serious
1 unsat minor/unsat serious
2 unsat minor/unsat serious

Type Discharge

Honorable
Honorable
Honorable
General

c. E-7--E-9: Must not
receive two or more bottom
5 percent or bottom 1 percent
in past 2 years in performance
of duty or conduct marking.

2. Commanding officers of
deserving members not meeting
criteria for honorable dis-
charge may at their discre-
tion:

a. Submit recommendation
to CHNAVPERs for 1 year
voluntary extension to give
honorable discharge.

b. Submit recommendation
to CHNAVPERs for honorable
discharge if extension not
desired notwithstanding fact
that criteria is not met.

DoD 1332.14

IX. Convenience of the Government (Cont'd)

O. Discharge Authority.

ARMY (ARs 635-10, 635-200)	MARINE CORPS (MARCORSEPMAN (MCSM))	AIR FORCE (AFMs 39-10, 39-12)
Varies with the particular separation involved. See appropriate reference for separation indicated.	CMC except authority delegated to Recruit Depot Commanders at Parris Island and San Diego.	Commanders exercising Special or General court-martial authority over the Airman depending on the reason for separation. Authority to act on certain cases may be delegated to a member of the respective commander's staff, i.e., ETS, Pregnancy and Hardship.
Chief of Naval Personnel		
1. Discharge of aliens not lawfully admitted to the United States (para 5-5). Discharge of members of Reserve Components on active duty (para 5-7). Failure after enlistment to qualify medically for flight training (para 5-8). Lack of jurisdiction (para 5-11). Separation to preclude nonproductive reassignments for short periods of time. Includes: overseas returnees (para 5-12). Personnel assigned to units scheduled for inactivation or permanent change of station (para 5-13). Enlisted personnel eliminated from service academies (para 5-14). Reserve Component Personnel ordered to IADT under Reserve Enlistment Program (para 5-15). Early	1. Discharge on grounds of been alien (3810420) a. Member may request hardship based on being an immigrant alien who has not become a naturalized U.S. citizen. b. Member advised that acceptance of such discharge shall permanently preclude member from becoming a U.S. citizen (8 U.S.C. 1426).	To Separate with Insufficient Service Retainability for a Permanent Change of Station. Insufficient Retainability for Required Retraining. To accept Public Office. To be Eliminated from the Officer Training School (OTS) if Enlisted Specifically for such training. To Separate Because of Medal of Honor. To attend Accredited Medical Dental, Osteopathic, Veterinary, Optometry, or Clinical Psychology (Ph.D) School.
2. Discharge as a result of issuance of a writ of habeas corpus wherein it was determined that member's retention in service is illegal. Type of discharge issued as warranted by service record. (3850220)		

P. Additional Categories.

1. Discharge on grounds of been alien (3810420)

a. Member may request hardship based on being an immigrant alien who has not become a naturalized U.S. citizen.

b. Member advised that acceptance of such discharge shall permanently preclude member from becoming a U.S. citizen (8 U.S.C. 1426).

2. Discharge as a result of issuance of a writ of habeas corpus wherein it was determined that member's retention in service is illegal. Type of discharge issued as warranted by service record. (3850220)

Para 6012

For reasons of national health, safety, or interest only when recommended by a Government agency authorized to make such determination and recommendation.

At the individual Marine's request to permit transfer, in an active duty status, to the Hospital Corps of the Navy.

IX. Convenience of the Government (Cont'd)

ARMY (ARs 635-10, 635-200)	NAVY (BUPERSHAN(RPM))	MARINE CORPS (MARCORSEPMAN (MCSM))	AIR FORCE (AFMs 30-10, 39-12)
<p>relief from IADT because of emergency conditions (para 5-16), and members assigned to medical holdings detachment/companies (para 5-17); early separation of personnel denied reenlistment under the Qualitative Management Program (para 5-27), Expedited Discharge Program (para 5-31), Trainee Discharge Program (para 5-33).</p>	<p>3. Marginal performer-- restrict provisions to apply only to grade E-3 and below serving first enlistment with less than 3 years active military service.</p> <p>4. Upon written request of member enrolled in any Navy Officer Candidate Program, including Navy Academy.</p> <p>5. When member cannot be assigned appropriate duties because of security reasons.</p> <p>6. Upon determination of medical officer that member in any Navy Officer Candidate is not physically qualified for appointment as an officer (physical disqualification is not considered a disability).</p> <p>7. Member has more than maximum number of dependents.</p> <p>8. Erroneously enlisted in higher rate than eligible for.</p> <p>9. Overheight</p> <p>10. Obesity</p>	<p>To enter or return to Recognized Institution of Higher Education or Vocational or Technical School in full-time resident course of instruction.</p> <p>To separate on Indefinite Enlistee Reaching Mandatory Separation Point.</p> <p>Marginal Performer--Restrict provisions to apply only to grade E-3 or below with less than 3 years active military service.</p> <p>Nonfulfillment of Guaranteed Training Enlistee Program Agreement.</p> <p>To Discharge for having concealed certain juvenile records.</p> <p>Miscellaneous reasons.</p> <p>To qualify for early separation from extension of enlistment.</p> <p>To discharge because of exceeding weight standards.</p> <p>To discharge for the preservation of good order and discipline.</p>	

DoD 1332.14

IX. Convenience of the Government (Cont'd)

ARMY (ARs 635-10, 635-200)	NAVY (RUPERSMAN(BPM))	MARINE CORPS (MARCORSEPHAN (MCSM))	AIR FORCE (AFMs 39-10, 39-12)
	11. Upon member's written request submitted where there is a demonstrated dependency or hardship does not meet the criteria specified.		For service with the Air National Guard/U.S. Air Force Reserve Units (Palace Chase). AFROTC Scholarship and Commissioning Program for Airmen. Failure in Prisoner Retraining or Rehabilitation.

DoD 1332.14

X. Other Reasons

A. Expiration of Enrollment or Fulfillment of Service Obligation.
An honorable separation (honorable discharge) or separation under honorable conditions (general discharge) as warranted by the member's military record.

B. Dependency or Hardship.
An honorable separation (honorable discharge) or separation under honorable conditions (general discharge) as warranted by the member's military record.

1. Separation may be directed when genuine dependency or undue hardship exists, and

a. The hardship or dependency is not of a temporary nature;

b. Conditions have arisen or have been aggravated to an excessive degree since

	ARMY (ARs 635-10, 635-200)	NAVY (BUPERSMAN(BPH))	MARINE CORPS (MARCORSEPMAN (MCSH))	AIR FORCE (AFMs 39-10, 39-12)
	Same. (Para 2-2, AR 635-200)	Same, 3840260	Same, Para 6009 & 6002.2a	SAME
	Same. Voluntary application for separation due to parent-hood of married service women and sole parents are provided for under this provision (Para 6-3, AR 635-200)	Same, 3850220 & 3850240	Similar, Para 6002.2c & 6014	SAME

DoD 1332.14

X. Other Reasons (cont'd)

entry into the Service and the member has made every reasonable effort to remedy situation;

c. The separation will eliminate or materially alleviate the condition; and

d. There are no means of alleviation readily available other than the separation.

2. Undue hardship does not necessarily exist solely because of altered present or expected income or because the individual is separated from his family or must suffer the inconvenience normally incident to military service.

MARINE CORPS
(MARCONSEPHAN (MCSM))

NAVY (RUPERSHAN(BPM))

ARMY (ARs 635-10, 635-200)

AIR FORCE (AFMs 39-10, 39-12)

DoD 1332.14

	ARMY (ARs 635-10, 635-200)	NAVY (BUPERSMAN(BPM))	MARINE CORPS (MARCORSEPMAN (MCSM))	AIR FORCE (AFMs 39-10, 39-12)
--	----------------------------	-----------------------	------------------------------------	-------------------------------

X. Other Reasons (cont'd)

C. Disability. An honorable discharge or a general discharge, as warranted by the member's military record, when the member has been determined to be physically unfit to perform the duties of his/her office, rank, grade or rating, and is not entitled to retirement under the provisions of 10 USC, Chapter 61.

Same. (Para 5-5, AR 635-200) Same 3850280

Same, Para 6002.2e SAME (AFR 35-6)

D. Minority. Release by

voidance of contract or separation with an honorable or a general discharge, as warranted by the member's military record.

Same, 3850260

Similar, Para 6002.2a & 6015 SAME except also applies provisions where parental or guardian consent was given.

1. Release or separation may be directed after determination that:

- a. There is evidence satisfactory to the discharge authority that the member is under 18 years of age; and

X. Other Reasons (cont'd)

- b. The member en-
listed without
the written con-
sent of his/her
parent or guard-
ian, is he/she
has a parent or
guardian en-
titled to his/
her custody and
control.

2. Upon application by Same.
the parents or
guardian of a regu-
lar enlisted member
of an Armed Force to
the discharge
authority within 90
days after the mem-
ber's enlistment,
the member shall
be discharged for-
his/her own con-
venience, with the
pay and form of
discharge certificate
for which his/her
service entitles
him/her, if i.s. and
b., above, are
satisfied.

DoD 1332.14

X. Other Reasons (cont'd)

E. Security. Separation, with the character of discharge, and under conditions and procedures stipulated by the Secretary of Defense, as set forth in DoD Directive 5210.9 and similar Directives applicable to the Coast Guard, when retention is clearly inconsistent with the interest of national security.

ARMY (ARs 635-10, 635-200)	NAVY (BUPERSMAN(BPM))	MARINE CORPS (MARCORSEPMAN (MCSM))	AIR FORCE (AFMs 39-10, 39-12)
Same. (AR 604-10)	Same 3420200 and SECNAVINST 5521.6	Same Para 6002.21 and 6020	SAME (AFR 35-62)

Appendix F



MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

27 MAY 1978

Honorable Warren G. Magnuson
Chairman, Committee on Appropriations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

During consideration of the FY 1978 Defense Appropriations Bill, the Senate and House Appropriations Committees reviewed the Military Services' policies regarding the apprehension of deserters. The committee reports discussed a GAO report of January 31, 1977, entitled "Millions Being Spent to Apprehend Deserters, Most of Whom are Discharged as Unqualified for Retention" (reference Senate Appropriations Report No. 95-325, page 113 and House Appropriations Report No. 95-451, page 80).

In its response to this GAO report, the Department of Defense stated it would study apprehension policies as part of an overall joint service study of the administrative discharge system. This study includes a review of the GAO conclusion that current apprehension practices have no deterrent effect on members who do not desert, and the GAO's recommendations to reduce expenditures by either discharging deserters in-absentia or foregoing apprehension efforts until an individual has been absent for a sufficient period of time to indicate that a voluntary return is improbable. The Committees requested a copy of the study along with a discussion of policy and procedural changes made as a result of the House Committee's recommendations that resulted in a reduction of \$5.9 million and 450 military positions from the Defense budget for FY 1978.

The study is still in progress. Aside from the discharge in-absentia issue, several other major segments of the administrative discharge process, summarized at Tab A, are under consideration. A copy of the study will be provided upon completion.

In view of the concern expressed by the Committee regarding the practice of apprehension of deserters, this matter has been addressed separately. After careful consideration, the Department of Defense has decided against adopting either of the GAO recommendations, but will further define and limit the policy pertaining to discharge in-absentia to cases of unauthorized absence of 18 months or more, on a case-by-case basis, as determined by the Secretary of the Military Department concerned. Although some savings in costs of apprehension might result from adoption of either of the GAO's recommendations, such

action would have an immediate adverse effect on military discipline and readiness. It is also likely that adoption of the GAO recommendations would increase recruiting and training costs associated with providing replacements. Of utmost significance, they would increase accession requirements in future years when we foresee an increasingly difficult recruiting market. Also, such a policy is contrary to our recently established attrition objectives, which emphasize to commanders at all levels that manpower is not unlimited and that they must, through the use of discipline, guidance, counseling and good leadership techniques, reduce the attrition of those individuals who offer potential for becoming productive members.

Additional rationale and the change to the DoD Directive implementing the Department's decision are at Tab B. The results of a Department of the Army study specifically designed to determine the effectiveness of current practices with regard to desertion vis-a-vis implementation of a non-apprehension in-absentia discharge policy are also included.

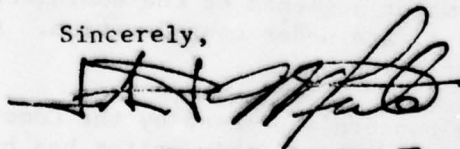
The Committees also requested a report of policy and procedural changes implemented since submission of the FY 1978 budget. A revised DoD Directive 1325.2 (Tab C) was issued during this past year on desertion and unauthorized absenteeism. Because of traditional Service differences in mission and personnel policies, specific programs to deter such incidents are best dealt with by the individual Services. The DoD Directive provides firm policy guidance yet is sufficiently flexible to permit the Military Services leeway to deal effectively with these problems. The DoD Directive also refines and standardizes the reporting requirements among the Services and provides closer interface with the FBI's National Crime Information Center and with the Department of State.

With the exception of the Navy, absentee and deserter incidents have been on the decline for the last several years (Tab D). The Navy initiated a program on December 1, 1977, that requires deserters to be returned to their parent commands for appropriate disposition when the absence is less than 180 days. A report on the progress of this program will be available later this summer.

I hope this letter will provide you with new insight to some of the more important actions the Department has been working on in these related areas.

A similar letter has been sent to the Chairman of the House Appropriations Committee.

Sincerely,



JOHN P. WHITE
Assistant Secretary of Defense
(Manpower, Reserve Affairs & Logistics)

Enclosures

cc: SASC



MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

27 MAY 1978

Honorable George H. Mahon
Chairman, Committee on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

During consideration of the FY 1978 Defense Appropriations Bill, the Senate and House Appropriations Committees reviewed the Military Services' policies regarding the apprehension of deserters. The committee reports discussed a GAO report of January 31, 1977, entitled "Millions Being Spent to Apprehend Deserters, Most of Whom are Discharged as Unqualified for Retention" (reference Senate Appropriations Report No. 95-325, page 113 and House Appropriations Report No. 95-451, page 80).

In its response to this GAO report, the Department of Defense stated it would study apprehension policies as part of an overall joint service study of the administrative discharge system. This study includes a review of the GAO conclusion that current apprehension practices have no deterrent effect on members who do not desert, and the GAO's recommendations to reduce expenditures by either discharging deserters in-absentia or foregoing apprehension efforts until an individual has been absent for a sufficient period of time to indicate that a voluntary return is improbable. The Committees requested a copy of the study along with a discussion of policy and procedural changes made as a result of the House Committee's recommendations that resulted in a reduction of \$5.9 million and 450 military positions from the Defense budget for FY 1978.

The study is still in progress. Aside from the discharge in-absentia issue, several other major segments of the administrative discharge process, summarized at Tab A, are under consideration. A copy of the study will be provided upon completion.

In view of the concern expressed by the Committee regarding the practice of apprehension of deserters, this matter has been addressed separately. After careful consideration, the Department of Defense has decided against adopting either of the GAO recommendations, but will further define and limit the policy pertaining to discharge in-absentia to cases of unauthorized absence of 18 months or more, on a case-by-case basis, as determined by the Secretary of the Military Department concerned. Although some savings in costs of apprehension might result from adoption of either of the GAO's recommendations, such

action would have an immediate adverse effect on military discipline and readiness. It is also likely that adoption of the GAO recommendations would increase recruiting and training costs associated with providing replacements. Of utmost significance, they would increase accession requirements in future years when we foresee an increasingly difficult recruiting market. Also, such a policy is contrary to our recently established attrition objectives, which emphasize to commanders at all levels that manpower is not unlimited and that they must, through the use of discipline, guidance, counseling and good leadership techniques, reduce the attrition of those individuals who offer potential for becoming productive members.

Additional rationale and the change to the DoD Directive implementing the Department's decision are at Tab B. The results of a Department of the Army study specifically designed to determine the effectiveness of current practices with regard to desertion vis-a-vis implementation of a non-apprehension in-absentia discharge policy are also included.

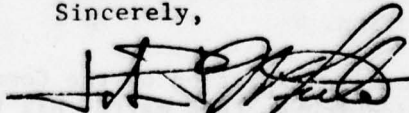
The Committees also requested a report of policy and procedural changes implemented since submission of the FY 1978 budget. A revised DoD Directive 1325.2 (Tab C) was issued during this past year on desertion and unauthorized absenteeism. Because of traditional Service differences in mission and personnel policies, specific programs to deter such incidents are best dealt with by the individual Services. The DoD Directive provides firm policy guidance yet is sufficiently flexible to permit the Military Services leeway to deal effectively with these problems. The DoD Directive also refines and standardizes the reporting requirements among the Services and provides closer interface with the FBI's National Crime Information Center and with the Department of State.

With the exception of the Navy, absentee and deserter incidents have been on the decline for the last several years (Tab D). The Navy initiated a program on December 1, 1977, that requires deserters to be returned to their parent commands for appropriate disposition when the absence is less than 180 days. A report on the progress of this program will be available later this summer.

I hope this letter will provide you with new insight to some of the more important actions the Department has been working on in these related areas.

A similar letter has been sent to the Chairman of the Senate Appropriations Committee.

Sincerely,



JOHN P. WHITE

Assistant Secretary of Defense
(Manpower, Reserve Affairs & Logistics)

Enclosures

cc: HASC

JOINT-SERVICE ADMINISTRATIVE DISCHARGE STUDY

A. OBJECTIVE. To provide a definitive analysis of the administrative discharge system, with an articulation of overall purpose, including the needs of government, the Military Services, society and the individuals affected.

B. SUMMARY OF MAJOR ISSUES DEVELOPED THUS FAR

1. Whether or not the U.S. Armed Forces should discharge in-absentia (TAB B).

2. Whether or not the "Honorable Discharge" for "honorable" service in the Armed Forces should be retained.

a. Objective: To achieve agreement/resolution on a statement of "honorable" service.

b. Discussion: The strength of the military hierarchal structure, which requires very strong personal interrelationships and group cohesion for success under the stress of combat, is the subjective - and necessarily personal - evaluation of performance and conduct. DoD Directive 1332.14, "Enlisted Administrative Separations," establishes a personnel management system which combines objective standards of performance and personal conduct with a subjective evaluation process. The Honorable Discharge serves as the cornerstone of this system.

3. Should the three-tiered administrative separation system be retained.

a. Objective: To achieve agreement/resolution on continuation of the three-tiered system or agreement/resolution on a modified system of characterization.

b. Discussion:

(i) The Military Services must have a system for discharging persons for cause. That system must be as fair and equitable as is possible. It also must be dynamic and responsive to societal needs. Above all, it must comport with the time-honored military custom and strong military tradition of honoring good and faithful service at the end of a period of service. The present administrative system of Honorable, General (under honorable conditions) and Discharge Under Other Than Honorable Conditions (formerly Undesirable Discharge) resulted from a Joint Armed Services Committee formed in 1947. This committee recommended the addition of the General Discharge. It recognized that a simple bifurcated system was not as equitable or as useful as a three-tiered system since a two-level system did not clearly provide a characterization for those persons whose service was neither honorable nor less than honorable within the time-honored meanings of these terms.

(ii) There is no way to acknowledge meritorious service without conversely acknowledging less than meritorious service, if only by omission

of honorable recognition. It is further believed that former service members should have a right to a record attesting to the quality of service which they can use as they desire to meet requirements imposed by civilian society.

4. Whether the DoD directive governing enlisted administrative separations should be modified in order to force more administrative discharges into the punitive system under the Uniform Code of Military Justice (UCMJ) as a means of reducing or stemming attrition.

a. Objective: To achieve agreement/resolution on the role of DoD Directive 1332.14 in the processing of cases which may also be processed under the UCMJ.

b. Discussion: The administrative discharge system provides the armed forces with an expeditious means of separating, with an appropriate characterization of service, those members unable to adapt to service life and those who clearly demonstrate they are unqualified for retention. At the same time, the DoD directive recognizes that the military member has certain rights which must be protected. The UCMJ is a comprehensive criminal code which regulates the conduct of members of the armed forces. The Code's primary goal is to insure high standards of morale and discipline, which promote the efficiency of the fighting forces, while protecting the constitutional rights of the military member. This system is more time-consuming, costly and has greater long-term impact on the individual concerned.

5. Whether or not the marginal performer program (including the expeditious discharge program) is causing unnecessary attrition.

a. Objective: To examine the provisions for discharging marginal performers and recommend corrections if required.

b. Discussion: The marginal performer program has served as a cost effective and expeditious means of separating non-performers prior to those individuals becoming the subject of more severe administrative/disciplinary action. The administrative discharge system, and especially the marginal performer program, have been criticized as a result of a perception that the Services are taking the "easy way out" rather than exercising proper leadership and enforcing traditional disciplinary alternatives. Recent attrition levels have tended to support this perception. However, the marginal performer program is only one facet of the administrative separation process and may not be the sole cause of the first term attrition problem.

WHETHER OR NOT THE U.S. ARMED FORCES SHOULD DISCHARGE IN-ABSENTIA

Background:

Department of Defense policy provides that a member may be discharged for misconduct when an unauthorized continuous absence of one year or more has been established. In accordance with this policy, a member beyond military control for more than one year may be discharged at Secretarial discretion provided prosecution is barred by the statute of limitations, or when such action would serve the National interests. However, in March 1969 the Subcommittee on Treatment of Deserters from the Military Services, Committee on the Armed Services, United States Senate (Senate Report No. 91-93) recommended that discharges in-absentia be discontinued in the case of deserters and further, that such cases be processed in accordance with the Uniform Code of Military Justice (10 U.S.C. 801 et seq). Since that time the discharge in-absentia policy has not been generally applied. It has only been applied in those cases where the member is an alien who has gone to a foreign country where the U.S. has no authority to apprehend and in those cases where prosecution is barred by the statute of limitations.

The GAO in a report dated January 31, 1977, on "Millions Being Spent to Apprehend Military Deserters, Most of Whom are Discharged as Unqualified for Retention," concluded that current apprehension practices have no deterrent effect on members who do not desert and recommended:

"Stopping the apprehension of deserters except when the individual is wanted for some specific purpose, such as another crime or security matter, and discharge them in-absentia after they have been absent for a stipulated period."

"Not routinely undertaking aggressive apprehension efforts until an individual has been gone long enough to indicate that a voluntary return is improbable."

In its response to the GAO, the DoD stated in part:

"Discharge in-absentia foregoes possible prosecution of other criminal offenses not discoverable until the deserter is returned to military control. Such a discharge would subvert the military justice mechanism by permitting the offender to avoid later trial. Discharge in-absentia after the mere passage of time could also result in further inequities in punishment. For example, the individual who evaded past the 'in-absentia' discharge point would receive an administrative discharge while those who returned earlier would face not only discharge, but other Uniform Code of Military Justice sanctions. Such discharge action, when the whereabouts of an individual is unknown, implies a lack of interest in the individual and could result in the issuance of an erroneous discharge. Return to

military control also helps to determine the reason for desertion. Full implementation of the in-absentia provision could undermine the concepts of military discipline and threaten mission accomplishment."

"Another aspect regarding the discharge in-absentia provision causing considerable concern is insuring that not only have all reasonable efforts to return the individual to military control been explored, but also that due process requirements are accomplished. Critics of the current three-tiered administrative discharge system have repeatedly charged that the Military Services violate an individual's right to full due process when separation is effected under other than honorable conditions through the administrative discharge system, even when the military member is present and afforded a hearing. To discharge in-absentia without further study does not seem appropriate."

* * * * *

"Department of Defense policy requires that absentees be returned to military control as soon as possible. Each case is then reviewed on its own merits by the particular Service involved to determine whether or not the individual is suitable for retention."

Following submission of the GAO report and DoD response thereto, the Congress took action to reduce the DoD budget for FY 1978 by \$5.9 million and some 450 military positions. Furthermore, the Congress took action to reduce the FBI's budget submission in the area of apprehension efforts of deserters by some \$5.9 million. As a result, the FBI will curtail its program for investigation and apprehension of deserters except in those instances where the individual is wanted for another serious crime. The DoD and the FBI are working on a mutually acceptable modification to our present arrangement. In addition, the Military Departments are preparing a joint-Service apprehension program for deserters.

In a related matter, Pub. L. 95-126 of 8 October 1977 amended section 3103 of Title 38, U.S. Code, to provide another bar to veterans' benefits "...on the basis of an absence without authority from active duty for a continuous period of at least one hundred and eighty days if such person was discharged under conditions other than honorable...".

Discussion:

The policy which would permit discharge of deserters in-absentia has undergone periodic evaluation within DoD since 1969. It has not been resumed as a general practice during this time for several reasons, including practical considerations and because it was conceptually inconsistent with other programs. Portions of President Ford's Clemency Program of 1974 and the Special Discharge Review Program of 1977 -- approved by President Carter --

provided for the voluntary return of at-large deserters from the Vietnam-era to military control. Upon return, they were afforded the safeguards of our discharge procedures for those being processed for discharge by reason of misconduct, including consultation with a lawyer. In practically all cases they received an OTH discharge. They then became eligible to apply for further clemency or an upgrade of discharge characterization. An unlimited discharge in-absentia policy for deserters would have undermined these programs.

From a practical standpoint, with the establishment of the All-Volunteer Force in 1973, the goal of the DoD has been to identify and separate marginal performers as quickly as possible and to retain all others for the full term of enlistment. Attainment of this goal -- in conjunction with the maintenance of relatively constant strength levels in a declining manpower pool -- mandates reduction of the early attrition of those individuals who offer potential for becoming productive members through application of positive manpower actions including the use of discipline, guidance, counseling and good leadership techniques. A discharge in-absentia policy -- unlimited by the threat of apprehension and punishment as suggested by the GAO -- would in effect confer the "right to quit" on individual members and is contrary to these objectives.

The potential impact of such a discharge in-absentia policy was assessed in an Army study. A part of the basis for analysis included surveys of both trainees and troops assigned to operational units. Although the GAO report indicated it could find no evidence of deterrent value in the current system, the Army's evaluation of individual troop responses reflected that the threat of apprehension and punishment discourages many members from deserting. Others indicated they would have already deserted if the Army had in existence an in-absentia discharge policy instead of the current system. At eight installations where the survey was administered, between 4 and 10% of the soldiers surveyed indicated they would terminate their service early through in-absentia procedures if such a practice were adopted. Attachments 1 and 2 to this Tab contain a detailed analysis of the costs of apprehension and accession requirements. The DoD may expect to avoid costs in the range of \$30-50 million annually if all apprehension efforts are terminated and a discharge in-absentia policy is adopted. However, this practice would also involve an immediate increase in accession requirements that could reach as high as 14,500 annually and an increase of over \$81 million in costs over the current system for the Army alone.

Comment:

Circumstances underlying the 1969 moratorium on the discharge in-absentia policy have totally changed. We are no longer engaged in an armed conflict, nor do we have access to a relatively unlimited manpower supply supported by a draft. Congressional commentary has shifted from criticism about being too lenient on wartime deserters and absentees to a concentration on trimming unnecessary expenses by improvement in personnel management systems. However,

these changes in basic circumstances should not be interpreted as being permissive of a return to the pre-1969 policy on this issue without full consideration of other events that have transpired since that time.

Although there are currently no similar programs underway or contemplated which would now conflict with such a policy, both of the Presidential programs for Vietnam-era deserters -- and other former service personnel with less than honorable discharges -- along with enactment of Pub. L. 95-126, have served to re-enforce the need for a characterization system -- based on honorable service -- in maintaining high morale and discipline within the Armed Forces. They have also provided a fuller awareness of the tremendous impact of the characterization system on the individuals concerned after discharge, and of the requirement for insuring that less than honorable discharges are not issued indiscriminately or capriciously. Further, that to the extent possible, equity is maintained between the treatment afforded various eras of servicemembers, and that when errors or inequities occur they are rapidly corrected.

In addition to these factors, consideration must be given to many other matters in determining the policy on desertion for 1978 and beyond. These include the continuing requirement for our members to be instantaneously responsive during times of hostilities. Such responsiveness is a time-proven element of successful military operations and is based on discipline and prompt obedience to lawful orders of superiors at all times. These essential qualities are directly supported by appropriate treatment of absenteeism under the Uniform Code of Military Justice. In this context, it must be acknowledged that the long-established policy of the Armed Forces is to have absentees returned to military control as soon as possible. Upon their return, disposition -- disciplinary or administrative -- is determined on an individual basis. All but about 1,500 Vietnam-era (4 August 1964 - 28 March 1973) deserters have been processed under this policy.

Conclusion:

Discharge in-absentia is currently authorized under the following conditions:

- a. When the prosecution of the member is apparently barred by statute of limitations, 10 U.S. Code 843.
- b. When the member is an alien and has gone to a foreign country where the U.S. has no authority to apprehend such a member under a treaty or agreement.
- c. When the appropriate Secretary drops a Reservist from the rolls of the Service concerned under 10 U.S. Code 1163.

The Department of Defense should not authorize the unqualified discharge of individuals in-absentia as recommended by GAO because of the great potential for increased costs and accession requirements -- assuming it would even be possible to recruit the replacements required in a declining manpower pool. In addition, such a policy should be rejected because of the adverse impact

it would have on military discipline, morale, and readiness, as well as the due process requirements established within our administrative separation system since 1969.

One alternative solution is to adopt the current practice as the permanent policy. While favored by many, this solution does not take into full account the change in basic circumstances since 1969, nor the fact that commencing October 1, 1978 the FBI will no longer be able to render its traditional nationwide assistance in the apprehension of deserters.

Another alternative is to try to devise the most effective solution in terms of current and anticipated overall DoD manpower requirements and costs which also comports with our goals for the All-Volunteer Force. This solution would include aggressive apprehension efforts -- followed by increased emphasis on guidance, counseling and leadership techniques -- in conjunction with a realistic in-absentia separation provision that recognizes there is a point of diminishing returns in such efforts. Under this solution, the DoD can still maintain the required deterrent to desertion necessary to control future accession requirements, and yet preserve for the Secretaries of the Military Departments a desired degree of flexibility in the management of their personnel resources. Under this alternative many favor a system where a deserter may be discharged at Secretarial discretion, on a case-by-case basis at the expiration of 18 months absence. The period of 18 months is suggested because it is a sufficient period of time to require a full commitment by all of the Military Departments to the apprehension program and to deter individuals from deserting, as well as to permit the apprehension of most of those who do desert.

Decision:

DoD Directive 1332.14 has been modified to reflect the alternative described above permitting discharge in-absentia after 18 months. This change is contained at Attachment 3 to this Tab.

SUMMARY OF GAO REPORT AND U.S. ARMY STUDY=
ANALYSIS OF COSTS OF APPREHENSION AND ACCESSION REQUIREMENTS

GAO Report (Jan 77): This report concluded "millions of dollars" could be saved if the Federal Government terminated apprehension efforts in routine deserter cases in favor of an "in-absentia" discharge system, where a discharge under other than honorable conditions (OTH) would be mailed to deserters after the passage of a set period of time. Finding no systematic accounting of apprehension costs among the Services, the GAO extrapolated from fragmentary available data that the DoD spent \$27M in FY75 and \$30M in FY76 for apprehension of deserters. Because it could find no empirical data to support a deterrent value in the current system of apprehending deserters, the GAO did not consider that a change to an "in-absentia" system would increase desertion and attrition rates. In addition, the GAO did not comment on potential increases in accession requirements nor include these costs in its calculations.

Army Study (Dec 77): Based on interviews at eight installations with trainees and regular troops, the Army study found that there is a significant deterrent in the use of the current system of apprehension and disposition of deserters. Between 4 and 10% of those interviewed (E-1's through E-5's) indicated they would choose to terminate their Army service early if they could expect to receive an OTH discharge in the mail at some point after deserting. This projected increase in desertions from a current rate of 1.4% for E-1's through E-5's would also cause concomitant major increases in early attrition, resulting in increased accession costs that would far exceed the cost of the current apprehension program. The Army study also found that it actually cost \$27.7M to operate its apprehension system in FY77, and that it would cost about \$0.2M to mail out discharge certificates in an "in-absentia" system. The Army study concluded that adoption of the system recommended by the GAO would remove a major factor in controlling absenteeism and would ultimately result in higher costs to the Federal Government than the current system.

Analysis: The recommendation in the GAO study to terminate apprehension of deserters is based upon gross estimates of selected expenditures and an unsupported assumption of the lack of value of current apprehension practices as a deterrent to desertion. It is useful only to the extent it has caused increased interest in the review and correction of the deserter problem.

The Army study is extremely broad in scope. Its principal value in resolving this issue is that it convincingly refutes the GAO assertion of lack of deterrent value of the current apprehension program. It provides a well reasoned range of projections of desertion rates and resultant increases in accession requirements that would likely occur in the Army upon adoption of a non-apprehension policy for deserters.

Table 1 reflects the cost and accession requirements involved. It is based on the computations in Table 2 which use the Army's estimated numbers in

conjunction with costs established in attrition studies undertaken within OSD. The most significant feature of this display is that adoption of the GAO recommendation would cause an immediate increase in accession requirements resulting from the loss of services of those apprehended deserters who are now rehabilitated and returned to duty. Further, the Government would continue to realize a net reduction in expenditures until the desertion rate reaches a break-even point of 19 per 1000, at which time accession requirements for the Army alone would increase by 3,700 annually. If personnel were not deterred from deserting under the GAO proposal -- as strongly asserted by the Army -- based on the most conservative interpretation of the information gathered by the Army's survey, the Army desertion rate in the peacetime all volunteer force would increase from 14 to 20 per 1000 at a net additional cost of \$5.5M and an increased Army accession requirement of 4,400 annually. A more liberal interpretation of the information reflects a projected desertion rate as high as 37 per 1000, at a net additional cost of \$81M with an increased accession requirement of 14,500 annually. (No estimate has been made as to potential increases in the event of future involvement in military actions.)

Table 1 *

Costs of Desertions - Army
(using estimated desertion rates)

	<u>Current Program</u>	<u>Current Rate</u>	<u>GAO Proposal</u>		
			<u>Break Even Rate</u>	<u>Low Desertion Estimate</u>	<u>High Desertion Estimate</u>
Rate per 1000 Enlistees (per E-1 thru E-5)	14 (18)	14 (18)	19 (25)	20 (27)	37 (50)
Number of Desertions	9,200	9,200	12,600	13,400	25,000
Resultant Accession Increase	7,300	8,000	11,000	11,700	21,800
Accession Change from Current Program		+ 700	+3,700	+4,400	+14,500
<u>Costs of Desertion</u>					
Apprehension Program	\$27.7M	\$.2M	\$.3M	\$.3M	\$.5M
Increased Accessions	<u>54.9M</u>	<u>60.5M</u>	<u>82.3M</u>	<u>87.8M</u>	<u>163.5M</u>
Total Cost of Desertion	\$82.6M	\$60.7M	\$82.6M	\$88.1M	\$164.0M
Change from Current Program	-	-\$22.1M	-	+\$5.5M	+\$81.4M

* Based on computations in Table 2 and assuming one deserter per desertion.

Table 2

Computations - Army Desertion Study
(Relationship to Increased Accession Requirements and Costs)

Army FY 1977 ExperienceDeserters

Rate per 1000 Enlistees	14
Number of Deserters	9,200

Estimated Manyear Loss to Deserters

Per Deserter ^{1/}	1.92
Total	17,700

Accession Requirement Computation

Expected Manyears Accessions ^{2/}	2.2
Accession Requirement (17,700 ÷ 2.2)	8,045

Cost Computation

Estimated Cost of Each Accession ^{3/}	\$7,525
Cost of Accessing 8,045 Personnel	\$60.5M

Army Rehabilitation Experience

Percent of Deserters Rehabilitated	9.15%
Number Rehabilitated (9.15% x 9200)	842

Manyears Recovered Through Rehabilitation

Per Rehabilitatee ^{1/}	1.92
Total Manyears Recovered	1,617

Accessions Avoided Through Rehabilitation

Manyears per Accession ^{2/}	2.2
Total Accessions Avoided	735

Costs Avoided Through Rehabilitation

Cost per Accession ^{3/}	\$7,525
Total Costs Avoided	\$5.5M

^{1/} Assumes: 22% desert at 3 months and have 33 months remaining.
27% desert at 6 months and have 30 months remaining.
51% desert at 21 months and have 15 months remaining.

^{2/} Assumes 3 year enlistments; 50% high school graduate; 50% non-high school graduate (MPP(A&R) Staff Study, 13 Sep 77).

^{3/} High school graduate - \$9,066; non-graduate - \$5,900 (MPP(A&R) Staff Study, 13 Sep 77).

AD _____

REPORT NUMBER 724382

Study on the Apprehension of Military
Deserters During Peacetime
in an
All-Volunteer Force

FINAL REPORT

By

Dr. Collier M. Sublett

CPT Gary R. Greenfield

U. S. ARMY ADMINISTRATION CENTER
Combat Developments Directorate
Human Resources Division
Ft Benjamin Harrison, Indiana 46216

December, 1977

(Not included due to bulk)

att 2 to tab B



THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

MAY 23 1978

MEMORANDUM FOR The Secretaries of the Military Departments

SUBJECT: Discharge in-Absentia

I have reviewed the responses of the Military Departments regarding the discharge in-absentia issue which emanated from the current study of the administrative discharge system. I have determined that discharge in-absentia will be limited to those circumstances outlined on the attachment. These changes will be incorporated in a formal revision to DoD Directive 1332.14 at a later time.

Effective October 1, 1978, the FBI will limit its efforts in the routine apprehension of deserters. A memorandum of understanding is currently being developed with the FBI in this regard. For planning purposes, the FBI has indicated they will continue to provide access to their identification and National Crime Information Center facilities and will make apprehension in selected circumstances (e.g., commission of another felony). Effective August 1, 1978, requests for FBI participation must be limited to aggravated deserter cases.

In view of the above, it is imperative that we establish a more effective program for the apprehension and disposition of deserters. This program must be developed with a view toward retention of those individuals who, with some additional support or direction, could be developed into effective performers.

Funding and manpower implications for increased apprehension efforts by the Military Departments will be addressed during the forthcoming POM review process. Regardless of the outcome of this issue, the Department of the Army, in conjunction with the other Military Departments and the Defense Investigative Service, is requested to provide a coordinated plan for a joint-Service apprehension program for deserters by July 1, 1978, including a proposed interservice support agreement.

✓ Signed
C. W. DUNCAN, JR.

500 3 10 T-6 B

"5. A member beyond military control by reason of unauthorized absence:

- a. May be discharged under other than honorable conditions in absentia under any of the following circumstances:
 - (1) When the prosecution of the member is apparently barred by statute of limitations, 10 USC 843, (reference (e)). In those cases, a Discharge Under Other Than Honorable Conditions certificate may be issued at any time after it is determined that prosecution is so barred, provided that upon consideration of available extenuating, mitigating and aggravating factors in each case, the discharge authority determines that the best interest of the Armed Forces will be served by issuance of such discharge.
 - (2) When the member who is an alien has gone to a foreign country where the U.S. has no authority to apprehend such a member under a treaty or agreement.
 - (3) When the member has been absent for a period of 18 months or more, on a case by case basis, as determined by the Secretary concerned.
- b. Shall be subject to the separation limitations of 10 USC 1163 (reference (f)), if he/she is a member of a Reserve component.
- c. Shall be notified of the imminent discharge action and the effective date thereof by registered or certified mail, return receipt requested, forwarded to the record address of the member or next of kin, as appropriate."

DoD Directive 1325.2 "Desertion and Unauthorized
Absenteeism" February 10, 1977

(NOT INCLUDED)

DEPARTMENT OF DEFENSE

MILITARY ABSENTEES/DESERTERS
(FY 68 - FY 77)

Military Service	Period	Number of Absentee Incidents (30 days or less)	Aver. Enlisted Monthly End Strength RATE PER 1,000	Number of Deserter Incidents (Over 30 Days)	Aver. Enlisted Monthly End Strength RATE PER 1,000
ARMY					
	'68	118,753	89.7	39,234	29.1
	'69	149,695	112.3	56,608	42.4
	'70	165,709	132.5	65,643	52.3
	'71	189,869	176.9	79,027	73.5
	'72	135,410	166.4	50,993	62.0
	'73	113,796	159.2	37,215	52.1
	'74	87,807	129.9	27,788	41.1
	'75 <u>1/</u>	64,018	95.4	17,966	26.0
	'76 <u>1/</u>	47,180	70.3	11,883	17.2
	'77 <u>3/</u>	31,790	47.0	11,287	16.7
NAVY					
	'68	9,589	14.4	5,621	8.5
	'69	9,035	13.5	4,897	7.3
	'70	11,198	17.5	6,352	9.9
	'71	10,826	19.0	6,063	11.1
	'72	9,569	18.3	4,414	8.8
	'73	10,890	21.7	6,856	13.6
	'74	25,948 <u>2/</u>	53.8 <u>2/</u>	10,208	21.2
	'75	34,698	73.0	10,659	22.4
	'76	35,635	77.5	11,413	24.8
	'77 <u>3/</u>	35,348	76.9	14,539	31.6
MARINE CORPS					
	'68	NOT AVAILABLE		8,419	30.7
	'69	NOT AVAILABLE		11,587	40.2
	'70	47,000	174.3	16,109	59.6
	'71	35,174	166.6	11,852	56.2
	'72	30,793	170.0	11,817	65.3
	'73	42,979	234.3	11,600	63.2
	'74	50,200	287.5	15,582	89.2
	'75	52,719	300.9	18,396	105.0
	'76	35,503	201.8	12,153	69.2
	'77 <u>3/</u>	17,679	103.5	8,024	47.0
AIR FORCE					
	'68	3,194	3.6	393	.4
	'69	3,902	4.4	538	.6
	'70	4,890	5.9	984	.8
	'71	7,027	9.4	1,117	1.5
	'72	12,421	17.2	2,036	2.8
	'73	11,281	16.1	1,560	2.2
	'74	11,585	17.3	1,667	2.4
	'75	6,679	13.0	976	1.9
	'76	3,738	7.8	568	1.2
	'77 <u>3/</u>	1,779	3.8	267	.6

1. A slight distortion is present in the Army's figures due to the inclusion of officer incidents, which could not be readily purged from the reported data.
2. A change in the manner of reporting occurred. Prior to FY 74, absentees over 30 days and absentees less than 30 days were reported independent of the opposite category. In order to be consistent with other Services, Navy also began to include absentee incidents over 30 days in the reporting of absentee incidents of less than 30 days.
3. A change in reporting procedures discontinued the practice of counting individuals who departed AWOL and were later administratively determined to be deserters from appearing in both categories. In the case of the Army data, there may be some variance between this data and that contained on certain other internal reports because of this change.

NOTE: Cumulative Annual Incidents = "Rate"
Average of Enlisted Monthly End Strengths (Thousands)

OASD(MRA&L)(MPP)
March 1978

TAB D

Appendix G

Index to Reference/Supplemental Material

Congressional Interest

U.S. Congress, "Hearings before the House Armed Services Committee, Subcommittee on Military Personnel," 94th Congress, November, 1975 (unpublished hearings on the military discharge system).

U.S. Congress, "Report of the Committee on Appropriations, House of Representatives on the Department of Defense Appropriation Bill, 1974," H.R. No 93-662, 93rd Congress, 26 November 1973.

U.S. Congress, "Report of the Hearings by Subcommittee No. 3 of the Committee on Armed Services, House of Representatives on H.R. 10422," H.R. No 92-496, 92nd Congress, September 1971.

U.S. Congress, "Hearings before Subcommittee No 3 of the Committee on Armed Services, House of Representatives on H.R. 523 (H.R. 10422," 92nd Congress, June and July 1971.

U.S. Congress, "Report of the Committee on Armed Services, United States Senate, Subcommittee on Treatment of Deserters from Military Service, on Treatment of Deserters from Military Services," S. Rep. No. 91-93, 91st Congress, 1969.

U.S. Congress, "Hearings before the Subcommittee on Armed Services, United States Senate on Military Deserters," 90th Congress, May 1968.

U.S. Congress, "Joint Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary and a Special Subcommittee of the Committee on Armed Services, United States Senate, on Military Justice," 89th Congress, January and March, 1966.

U.S. Congress, "Report of Hearings by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate on Constitutional Rights of Military Personnel," 88th Congress, 1963.

U.S. Congress, "Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate on Constitutional Rights of Military Personnel," 87th Congress, February and March, 1962.

U.S. Congress, "Report of the Committee on Military Affairs, House of Representatives on Investigations of the National War Effort," H.R. No 1510, 79th Congress, 1946.

Reports of the U.S. General Accounting Office

U.S. General Accounting Office, Eliminate Administrative Discharges In Lieu of Court-Martial: Guidance for Plea Agreements in Military Courts is Needed. The Comptroller General of the U.S., dated April 28, 1978.

U.S. General Accounting Office, People Get Different Discharges in Apparently Similar Circumstances, Washington, D.C., The Comptroller General of the United States, 1 April 1976.

U.S. General Accounting Office, Urgent Need for a DoD Marginal Performer Discharge Program, Washington, D.C., The Comptroller General of the United States, 23 April 1975.

U.S. General Accounting Office, Improving Outreach and Effectiveness of DoD Reviews of Discharges Given Service Members Because of Drug Involvement, Washington, D.C., The Comptroller General of the United States, 30 November 1973.

Department of Defense/Military Department Reports or Other Documents

U.S. Department of Defense, Secretary of Defense Memorandum, "Report of the Task Force on the Administration of Military Justice in the Armed Forces," 11 January 1973.

U.S. Department of Defense, "Report of the Task Force on the Administration of Military Justice in the Armed Forces: (Vol. I-IV), Washington, D.C.: Department of Defense, November, 1972.

U.S. Army Military Personnel Center. Over the Hump on Adverse Attrition: Pre-ETS Losses Decline, Trend to Continue. Focus, 19 December 1977, 1-9.

War Department, Record and Pension Division Memorandum 367,623. "Discharge Without Honor," 8 June 1893.

Army Research Institute: Orend, R. J., Stroad, K. W. and Rosen, T. H. Selection of Qualified Army Enlistees: Analysis of Characteristics of Soldiers Separated Under TRADOC Regulation 635-1. ARI Technical Report TR 77-B2. Alexandria, VA: December, 1977.

Army Research Institute: Bell, D. B. and Houston, J. J., The Vietnam Era Deserter: Characteristics of Unconvicted Army Deserters Participating in the Presidential Clemency Program. ARI Research Problem Review 76-6. Alexandria, VA: July, 1976.

Air Force Military Personnel Center. MPLP Interview Study. (A briefing for USAF Assistant DCS/Personnel for Military Personnel), Randolph AFB, TX: Air Force Military Personnel Center, October 1975.

Army Research Institute. The U.S. Army Trainee Discharge Program: Who is the Likely Candidate? Alexandria, VA: U.S. Army Research Institute Briefing Supplement, June 1975.

Center for Naval Analysis: Stephan, R. A., Carroll, H. E. and Brown, N. Comparison of Navy and Air Force Administrative and Disciplinary Discharges. Center for Naval Analyses Research Contribution 218, Arlington, VA: November 1972.

Headquarters of the Army, Adjutant General's Office, Circular 9, "Discharge without Honor," 1893.

Headquarters of the Army, Adjutant General's Office, Circular 15, "Discharge Without Honor," 1893.

DoD Manpower Data Center. Discharge/Separation of Enlisted Members by Character of Service and Reason for Separation. Monterey, CA: DoD Manpower Data Center Report No. 3436. March, 1978.

Finneran, J. G., Vice Admiral, USN, "Testimony before the House Armed Services Committee, Subcommittee on Military Personnel," 94th Congress on 5 November 1975.

First Infantry Division. Individual Effectiveness Course Test. Ft. Riley, KS: 1st Infantry Div., December 1977.

Individual Reports and Articles

Baskir, L. M. and Strauss, W. A., Reconciliation After Vietnam: A Program of Relief for Vietnam-Era Draft and Military Offenders. Notre Dame, IN: University of Notre Dame Press, 1977.

Effron, A. S., "Punishment of Enlisted Personnel Outside the UCMJ: A Statutory and Equal Protection Analysis of Military Discharge Certificates." Harvard Civil Rights - Civil Liberties Law Review, 1974, Vol. 9, 227-234.

Farrow, E. S., Farrow's Military Encyclopedia, N.Y., N.Y.: 1885.

Jones, B. R., "The Gravity of Administrative Discharges: A Legal and Empirical Evaluation," Military Law Review, Vol 59, Winter 1973, 1-25.

Martin, A. J., Trends in DoD First-Term Attrition. In H. Wallace Sinaiko (Ed.) First Term Enlisted Attrition, Vol. I; Papers. Washington, D.C.: Smithsonian Institution, June 1977.

Oates, J.F.Jr., Jobs for Veterans: A Report to the President of the U.S., National Committee, Jobs for Veterans, March, 1974.

Pearman, W. A., "An Analysis of the Impact of Clemency Discharges on Recipient's Employment Prospects" in Presidential Clemency Board Report to the President. Washington, D.C.: U.S. Government Printing Office, 1975.

Slavin, P., "The Cruellest Discrimination: Vets with Bad Paper Discharges" Business and Society Review, 1975, Vol. 14, 25-34.

DoD memorandum/directives (Enlisted Administrative Separations and dates of publication):

SecDef memorandum to Secretaries of Army, Navy and Air Force, dated August 2, 1948, as amended

OSD memorandum, "Discharge of Homosexuals from the Armed Services," (M-46), October 11, 1969

DoDD 1332.14, "Administrative Discharges," dated January 14, 1959

DoDD 1332.14, "Administrative Discharges," dated December 20, 1965

DoDD 1332.14, "Enlisted Administrative Separations," dated September 30, 1975

DoDD 1332.14, "Enlisted Administrative Separations," dated December 29, 1976

DoDD 1332.28, "Discharge Review Board Standards and Procedures," dated March 29, 1978.

DoDI 1336.1, "Standardization of Forms - Report of Separation from Active Duty (DD Form 214 Series)," dated December 15, 1972 and proposed revision appearing in the Federal Register, Vol. 43, No. 138, Tuesday, July 18, 1978, pp. 30824-30834.

U.S. Department of Defense, Deputy Secretary of Defense memorandum, "Discharge in-Absentia," dated May 23, 1978.

U.S. Department of Defense, Status of Vietnam Era Veterans -- Report on Military Status, dated May 1978. *

U.S. Department of Defense, Deputy Assistant Secretary of Defense memorandum, Proposed Memorandum of Understanding, dated July 21, 1978 regarding FBI apprehension of deserters. *

U.S. Department of Defense, Deputy Assistant Secretary of Defense memorandum, Review of Application of Separation Program Designators (SPDs), dated February 14, 1977.

U.S. Department of Defense, Assistant Secretary of Defense memorandum, Military Administrative Discharge System, dated September 15, 1975.

U.S. Department of Defense, Secretary of Defense memorandum, "Department of Defense Drug Abuse Testing Program," dated January 7, 1975.

U.S. Department of Defense, Deputy Assistant Secretary of Defense memorandum, "Involuntary Separation of Women for Pregnancy and Parenthood," dated June 7, 1974.

U.S. Department of Defense, Assistant Secretary of Defense memorandum, "Review of Separation Program Numbers," dated August 1, 1972.

U.S. Department of Defense, Secretary of Defense memorandum, "Review of Punitive Discharges Issued to Drug Users," dated April 28, 1972.

U.S. Department of Defense, Secretary of Defense memorandum, "Review of Discharges Under Other Than Honorable Conditions Issued to Drug Users," dated August 13, 1971.

U.S. Department of Defense, Deputy Secretary of Defense memorandum, "Rehabilitation of Drug Abusers," dated July 7, 1971.

U.S. Department of Defense, Secretary of Defense memorandum, "Report of Senate Armed Services Committee on the Treatment of Military Deserters," dated June 5, 1969.

U.S. Department of the Army, Plan for a Deserter Apprehension Program, dated July 3, 1978. *

Public Law 95-126 dated October 8, 1977 regarding uniform standards and procedures for discharge review.

U.S. General Accounting Office, Eliminate Administrative Discharges In Lieu of Court-Martial: Guidance for Plea Agreements in Military Courts is Needed. The Comptroller General of the U.S., dated April 28, 1978.

Legislative Proposals involving Administrative Discharge Procedures:

92nd Congress - H.R. 10422 (Bennett)

93rd Congress - H.R. 86 (Bennett)

94th Congress - H.R. 52 (Bennett), 262 (Boland), 867 (Price), 2964 (Steiger), and 5305 (Stokes).

Court Decisions

American Veterans Committee Inc. v. James V. Schlesinger/Melvin R. Laird (Civil Act. No. 2311-72) (Banner v. Laird) U.S. District Court of the District of Columbia (1972)

United States v. Ruiz, 23 USCMA 181, 48CMR797 (1974)

United States v. Catlow, 23 USCMA 142, 48CMR758 (1974)

United States v. Russo, 23 USCMA 511, 50CMR650 (1975)

United States v. Phipps, 12 USCMA 14, 30CMR14 (1960)

(* Study Group participation was involved in these matters.)

Study Groups

Report of Interservice Working Group on Discharge and Separation Policies
(1974)

Department of Defense Ad Hoc Committee (1953) - (report not available)

Joint Army-Navy Committee (1946) - (report not available)